The Incorporated Accountants' Journal.

THE OFFICIAL ORGAN OF

The Society of Incorporated Accountants and Auditors

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Professional Notes.

ON August 24th the Prime Minister tendered the resignation of his Ministry to the King, who entrusted Mr. MacDonald with the formation of a National Government for the sole purpose of meeting the present financial emergency. The Prime Minister has secured the co-operation of Mr. Stanley Baldwin on behalf of the Conservative Party, and Sir Herbert Samuel on behalf of the Liberals. In the official statement it was announced that as the commerce and well-being, not only of the British nation, but of a large part of the civilised world, has been built up and rests upon a well-founded confidence in sterling, the new Government will take whatever steps may be deemed by them to be necessary to justify the maintenance of that confidence unimpaired.

We publish this month the final speeches of Counsel and the Judge's summing up in the *Royal Mail Steam Packet Company* case, together with an appendix embodying the accounts of the company for the years 1926 and 1927, and the Prospectus which was issued in July, 1928. Without these documents the figures referred to in the course of the proceedings are in many instances difficult to follow, and the appendix will accordingly facilitate a clear understanding of the case. Our observations on the professional aspect will be found in a leading article.

Sir Malcolm Ramsay, who has occupied the position of Comptroller and Auditor-General for many years, is retiring on September 30th. The country is thus losing the assistance of a valuable public servant, whose reports on national accounts were models of candid criticism. When he discovered irregularities they were always exposed without fear or favour, and consequently the control which he exercised had a salutary effect on the accounting methods of the departments which came under his supervision. Sir Malcolm was elected an honorary member of the Society of Incorporated Accountants and Auditors in the year 1924, and the good wishes of the members will go with him in his retirement. He is to be succeeded by Mr. Gilbert Charles Upcott, C.B., who is at present a Deputy Controller in the Treasury.

On an appeal from the Willesden County Court in the case of *Raymond* v. *Wooten*, an interesting decision was given in the King's Bench Division with regard to the rights of an agent to commission in negotiating the sale of a house. Mr. Justice Charles, in delivering judgment, said that the question before the Court was what was the position of an agent who, being instructed with others to sell a house, procured an offer to purchase "subject

to contract" which was accepted "subject to contract," and the sale subsequently went off owing to the vendor obtaining a better offer.

The agent claimed his commission, but payment was refused. His Lordship said that the agent had not completely performed his duty until a binding contract had been entered into. He could not, therefore, recover commission, and his remedy, if any, would be for damages for alleged breach of contract. But there was no such breach, as the matter was still open until the contract had been completed. The vendor had done nothing which she was not entitled to do, and was not in default in any respect. She could accept the later offer so long as the matter was at large, and therefore the agent was entitled neither to commission nor damages. The decision of the County Court Judge in favour of the agent was accordingly reversed.

Those of our readers who are concerned with the affairs of Industrial and Provident societies will read with interest the extracts from the report of the Chief Registrar of Friendly Societies which we publish in another column. These extracts deal with instances of defalcations and how they are brought about; also cases of incorrect accounting and auditors' special reports on the accounts presented to them. The particulars given by the Registrar are a useful guide to auditors as to the direction in which regularities may be looked for in other cases.

The Opinion of Counsel on the subject of the appointment of alternate directors, which was obtained by the Institute of Secretaries and published in our July issue, has been the subject of a good deal of discussion in the public Press. The Opinion on the various points was given on the assumption that the Articles of Association were in the form of Table A with the addition of an Article in common use in cases where the appointment of alternate directors is contemplated. By sect. 151 of the Companies Act, 1929, an assignment of his office by a director is ineffective unless it is approved by a special resolution of the company. It is therefore important to observe that Counsel do not regard the appointment of an alternate director as an assignment within the meaning of the section, because the original director still retains his office. Nevertheless, an alternate director must be included in the Register of Directors and in the return to be made to the Registrar of Joint Stock Companies. His name must also appear along with those of other directors on business letters, &c.

Counsel apparently regard an alternate director as a principal, and not as an agent of the director who appointed him. This provision is usually contained in the Article dealing with the matter, but Counsel do not regard such a provision as serving any useful purpose, their view apparently being that in the absence of anything to the contrary in the Articles of the company the alternate director is not an agent. The consequence of this appears to be that upon the appointment and acceptance of the alternate, the appointing director ceases to be responsible for the conduct of the company's affairs until the appointment is withdrawn.

The *Financial Times* has been discussing the question of the valuation of fixed assets in the accounts of a public company, including land, buildings and plant, and its conclusion is that the only way in which the matter can be satisfactorily dealt with is for these assets "to be valued by competent professionals every time the accounts are made up," the valuation to be "expressed in approximately realisable terms." Coming from the pen of a financial writer this is a somewhat startling proposition. It practically means that assets such as plant and machinery are to be valued at the figure at which they could be re-sold, whereas the generally accepted principle is that such assets should be stated at their value as a going concern, which is quite a different matter. If, for example, new plant is bought and installed this year, its realisable value at the end of the twelve months would probably be less than 50 per cent. of its cost. Is it, therefore, to be written down by one-half, and, if so, are the profits of the company for the twelve months to be charged with that amount?

We venture to say that no company could carry on its business on those lines. Plant is acquired for retention and not for sale, and it is its value for the purpose for which it was designed and not its saleable value at any given time which should be taken into account. The usual course is to so regulate the amount of depreciation written off that the asset will be extinguished within the term of its useful life and provision made for its replacement. Should the company have to be liquidated in the meantime there will, of course, be a substantial loss; but every business man knows that in the event of liquidation there is bound to be a loss on an asset of this character.

A further point referred to by the writer of the article is that if the asset is valued on the basis of cost, and the cost is a pre-war one, the company will probably be in possession of a considerable hidden reserve, but on the other hand, if the cost relates to a period round about the year 1920 there will be an over valuation. This is quite correct, unless the circumstances have been properly considered in connection with the fixing of the rate of depreciation. What has to be borne in mind is that when the asset works out it has to be replaced, and therefore a replacement value must be provided in the depreciation reserve. Should this not be done, the hidden reserve in the pre-war asset will gradually disappear, and when the time for renewal arrives there will not be sufficient to meet it.

Regarding the over-valuation of the post-war asset, to which the writer of the article refers, the application of a normal rate of depreciation calculated on the cost price would probably provide a reserve more than adequate to replace it in view of the subsequent fall in prices. The fact is that an independent valuation of assets such as plant and machinery is liable to be very misleading, and, taking all things into consideration, a much fairer and more equitable result is arrived at by writing off adequate depreciation year by year on the basis of replacement value. Other fixed assets, such as land and buildings, are not quite in the same category. For instance, their value may sometimes increase through circumstances unconnected with the business, but that would hardly justify a writing up in the accounts.

A Bill to amend the Canadian Companies Act (Bill No. 108) has been passed by the Canadian House of Commons, containing, *inter alia*, the following provision :—

> " Sub-section three of section one hundred and twenty-three of the said Act, as enacted by section thirty-five of Chapter nine of the Statutes of 1930, is repealed and the following substituted therefor :—
>
> " (3) Neither the auditor of any company nor any partner nor associate in any accounting or auditing company or business with the said auditor shall be capable of being appointed a director or officer of the company ; Provided, however, that this sub-section shall not apply to any private company, nor in the case of any company whose shares, bonds, debentures, or debenture stock are not offered for public subscription."

We understand that the Bill has now been passed by the Canadian Senate without amendment, and has thus become law, but at the time of going to press a copy of the Bill as finally passed is not available in this country, and we are therefore unable to state with absolute certainty that the foregoing is the final wording of the clause.

The Architects Registration Act has now received the Royal assent. It provides for the setting up of a Register of Architects. The register is to be controlled by a council composed of representatives of all the architectural bodies in the United Kingdom in proportion to their numerical strength, with the addition of one representative appointed by each of the Government Departments interested, while the leading bodies representing engineering, surveying and building are to have the right to appoint one representative each if they so desire. Persons whose names are on the register will be entitled to use the designation " Registered Architect," but the title " Architect " may continue to be used by any person although his name is not on the register. Penalties are imposed for improper use of the designation " Registered Architect," and power is given to the council to make regulations regarding admission and examination fees, &c. A rather unusual condition is attached whereby the council must set aside at least 50 per cent. of the fees received for providing scholarships and maintenance grants for the assistance of students of inadequate means.

Mr. R. Sutcliffe, F.S.A.A., the Borough Treasurer of Middlesbrough, has been granted by the Town Council an honorarium of £250 and an increase in his salary of a similar amount in recognition of his services to the Corporation in securing an Income Tax rebate of some £47,000 from the Inland Revenue Authorities. The effect of this rebate, it is stated, will enable the finance committee to reduce the town's rate for the next half-year by 6d. in the pound. Other municipalities will doubtless be interested to ascertain exactly how this large rebate has been obtained.

Life assurance companies are still exercising their ingenuity in providing additional attractions to policy holders. The latest form of policy, while embodying most of the previous options, gives the policy holder a choice at the age of 65 of taking in cash the full amount of all the premiums paid or of continuing the assurance as a paid-up policy for a maximum figure, or taking part in cash and continuing the assurance for a smaller amount. Where the policy holder takes a refund of the premiums the company is

thus left with only the interest earnings on the premiums to cover both the death risk and its own profit.

For offences relating to the failure to hold the statutory meeting of a company for the year 1930, and failure to lay before the company in general meeting a profit and loss account, fines totalling £550 were imposed on the company and two of its directors at the Mansion House, London, recently. It was stated that there were no funds in the company's coffers, and that the directors had taken no fees and the secretary no salary for some time, but the only concession made was that time to pay was allowed.

THE ROYAL MAIL PROSECUTION

THE report of the trial of Lord Kylsant, Chairman of the Royal Mail Steam Packet Company, and of Mr. H. J. Morland, formerly Auditor of the company, on charges arising out of the affairs of the company, has occupied over 200 columns of the *Incorporated Accountants' Journal* in this issue and that for August. The reason is that the prosecution of Mr. Morland involved issues of transcendent importance to the profession as a whole, besides being of great personal interest.

The indictment against the two defendants contained three counts. The first count charged Lord Kylsant that he on May 11th, 1927, being a director of the Royal Mail Steam Packet Company, did make, circulate or publish or concur in making, circulating or publishing an annual report of the directors of the company for the year 1926 which he knew to be false in a material particular in that the said annual report concealed from the shareholders the true position of the company with intent to deceive the shareholders. The defendant, Mr. Morland, was charged that he aided and abetted Lord Kylsant to commit that offence.

In the second count of the indictment Lord Kylsant was charged that he on May 9th, 1928, did make, circulate or publish or concur in making, circulating or publishing an annual report of the directors of the company for the year 1927 which he knew to be false in a material particular in that the said annual report concealed from the shareholders the true position of the company with intent to deceive the shareholders. Mr. Morland was also charged that he aided and abetted Lord Kylsant to commit that offence.

In the third count of the indictment Lord Kylsant alone was charged that he on June 29th, 1928, being a director of the Royal Mail Steam Packet Company, did make, circulate or publish or concur in making, circulating or publishing a certain prospectus inviting the public to subscribe to an issue of 5 per cent. Debenture Stock of the Royal Mail Steam Packet Company, which he knew to be false in a material particular in that he concealed the true position of the company with intent to induce persons to entrust or advance property to the company.

As we were able to announce in our last issue, Mr. Morland was acquitted on the two counts of the indictment relating to the company's annual accounts and he was ordered to be discharged, but Lord Kylsant was found guilty on the third count of the indictment only, and was sentenced to twelve months' imprisonment in the second division. Sir John Simon, on Lord Kylsant's behalf, intimated that there would be an appeal, and so far as Lord Kylsant is concerned the matter still remains *sub judice*.

The charges made against Mr. Morland related to the balance sheets of 1926 and 1927, the former containing a balance to the credit of profit and loss of £266,782 9s. 2d., and the latter a balance to the credit of profit and loss of £223,162 15s. 7d. On turning to the profit and loss accounts for each year, in the Appendix to our report, it will be found that the principal item brought to credit was set forth as follows:—"Balance for the year, including dividends on shares in allied and other companies, adjustment of taxation reserves, less depreciation of fleet, &c." It was not disputed that the words "Adjustment of taxation reserves" were required to be inserted in the profit and loss account by Mr. Morland before he would sign the balance sheets as expressing the information which he as auditor thought should be given.

It will be seen from the summing up of the learned Judge that he put to the jury whether Mr. Morland was guilty of fraudulent intent in signing accounts containing balances brought to the credit of profit and loss account from taxation reserves no longer required without disclosing or causing to be disclosed to the shareholders the respective amounts of such reserves. Mr. Justice Wright told the jury that if they were satisfied that Lord Kylsant was guilty on the main charge against him in the first and second counts of the indictment, then they could go on and consider whether Mr. Morland with guilty intent, knowing what Lord Kylsant was doing, was aiding and abetting him in committing a crime. It was not necessary, said the learned Judge, to prove that there was communication between a principal offender and the man who was charged with aiding and abetting, because if the second man had deliberate purpose

in assisting, if he did something which assisted the principal, and if he knew that the principal was engaged in committing the offence, then the charge of aiding and abetting would be made out. Here, again, in the case of Mr. Morland the jury must be satisfied that the statement which he signed was false and false to his knowledge, was published by him with the knowledge of its falsity, with an appreciation of its falsity and with the intention that it should deceive the shareholders.

It is necessary that all those who care for the honour and welfare of the profession should read the full report of the evidence given at the trial. It will be seen that Lord Plender, as the first witness for the Crown, dealt with certain questions, put to him in cross-examination by Sir Patrick Hastings on Mr. Morland's behalf, in the way which we would have expected. Sir William McLintock gave evidence as to his report to the Trade Facilities Committee, which no doubt led up to the prosecution, but it is only fair to Sir William to say that the Attorney-General's explanation will be accepted that he himself was responsible for the prosecution and that Sir William McLintock had nothing whatever to do with it. The only evidence on behalf of Mr. Morland was that of Mr. Henry Morgan, the President of the Society of Incorporated Accountants and Auditors, and Mr. H. L. H. Hill, the President of the Institute of Chartered Accountants. Mr. Morgan stated that, on the evidence before the Court, had he been the Auditor of the company he would have signed the balance sheets for 1926 and 1927. Mr. Hill said that in his view the "Balance for the year," as set out, "including Dividends on shares in Allied and other Companies, Adjustment of Taxation Reserves, less depreciation of Fleet, &c.," was properly brought in, and that nothing he had heard in the evidence would have caused him to qualify his certificate in the least. Similar views were expressed by Mr. Brian Manning, a Chartered Accountant, who was called on behalf of Lord Kylsant.

There may or may not be some difference of opinion in the profession as to whether Mr. Morland might have taken a somewhat different course to the one he adopted as auditor of the Royal Mail Steam Packet Company, but we do not believe that there is any doubt whatever in the minds of all recognised and reliable accountants as to the personal honour and professional integrity of the man who has just been through the intense ordeal of a nine days' trial and who has had to justify himself before a jury in a criminal Court at enormous expense and sacrifice. Mr. Morland had a distinguished academic career and he has been a member of the Institute of Chartered Accountants for over 30 years. Of a retiring disposition, he is not so well known to the public as the famous firm of which he is a partner, but everyone who has had real knowledge of him does not fail to testify to the usefulness of his life and the integrity of his career. His prosecution in the Central Criminal Court has caused the most pained surprise throughout the profession.

We do not close our eyes to the fact that there are some lessons to be learned from this trial, but we would utter a warning against hasty generalisations on needed reforms of the Companies Act based upon criminal charges in connection with a company incorporated under Royal Charter as far back as the year 1839. It has been a pride for many years that the standard of auditing adopted by members both of the Institute and Society has been above that demanded by the ordinary civil law. It will not help matters to discuss company accounts from any fear of what might happen to an auditor under charges which could be brought against him in a Criminal Court.

The Company Law Amendment Committee of 1925-6 (generally known as the Greene Committee) unanimously expressed the opinion that in general the law as it then stood with regard to the powers and duties of auditors was satisfactory. In the view of that Committee it would be a mistake to define these by statute having regard to the multifarious circumstances which in practice arise. The Attorney-General in his closing speech said he dissented entirely from the point of view which he understood Mr. Morgan to put forward—that an auditor was not concerned with the form of the profit and loss account. While Mr. Morgan was quite accurate, it is easy to go wrong in regard to this part of his evidence. What he said was that there is no indication in the Act of 1929 as to what a profit and loss account should contain, and in answer to the Attorney-General he also added, "If a profit and loss account is published I do not see that objection can be taken to it on the grounds that it is uninformative, but if it is published my view is this, that it shall not be so worded or stated that it is capable of deceiving or misleading."

The time will soon arrive when this and other questions must be dealt with, but we hope that in considering them the members of the profession will divest their minds as far as possible from the fact that a colleague has been placed in grave peril in the discharge of his duties as an auditor.

Society of Incorporated Accountants and Auditors.

MEMBERSHIP.

The following additions to the Membership of the Society have been completed since our last issue :—

ASSOCIATES.

ASTLEY, FRANK ASPINALL, Clerk to Milford & Co., 3, Richmond Terrace, Blackburn.

BOOTH, WILLIAM ROBERT, Clerk to Edmund D. White and Sons, London and Lancashire Chambers, 45A, Dale Street, Liverpool.

BOWSHER, LAURENCE FRANK, Clerk to E. R. Syfret & Co., Burg and Wale Streets, Cape Town.

BRADFORD, HARRY ALBERT, H.M. Assistant Inspector of Taxes, 845-7, High Road, Leytonstone, London, E.11.

BULLOUS, DONALD EDWIN, Clerk to J. W. Best & Co., St. Peter's Close, Sheffield.

CHUBB, ROBERT GLOYN, Clerk to Rabbidge, Sons & Hillyer, 3-4, Clements Inn, Strand, London, W.C.2.

COLE, JAMES PASLEY PARMITER, Assistant Accountant, Argentine Southern Land Co., River Plate House, 13, South Place, Moorgate, London, E.C.2.

COLMAN, SIDNEY HERBERT, 9, King's Close, Hendon, London, N.W.4, Practising Accountant.

CROSS, MALCOLM FREDERICK, Clerk to James Thomson, The Crescent, 115, Drake Street, Rochdale, Lancs.

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DAYAN, LESLIE, Clerk to Charles L. Barfoot & Co., Westgate Chambers, Newport, Mon.

FARRELL, WILLIAM, Clerk to J. & R. Morison & Co., 4, Blackfriars Street, Perth.

FRYER, RALPH KENNETH, Clerk to Mitchell & Plummer, Guildford Chambers, Cheapside, Luton.

GAME, WILLIAM HENRY, Clerk to Mayhew & Lawley, 62, Oxford Street, London, W.1.

GIBSON, STANLEY, Accountant, Bingley Urban District Council, Town Hall, Bingley.

GLEAVE, HERBERT VIVIAN, Clerk to Peat, Marwick, Mitchell & Co., 2, Park Place, Leeds.

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HINTON, GEORGE WILLIAM, Clerk to M. O. Beale & Co., 9-10, Railway Approach, London Bridge, London, S.E.1.

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LAMB, GEORGE EDMUND, Clerk to Starkie & Naylor, 6, South Parade, Leeds.

LAURENCE, LEONARD GEORGE, 15, Woodberry Way, Chingford, London, E.4 (formerly Clerk to Woodman, Cox & Wilkins, London).

LEWIS, CECIL JAMES, Clerk to Howard, Howes & Co., Norfolk House, Norfolk Street, London, W.C.2.

LONGWORTH, EDWARD, Clerk to Alfred Burgess & Co., 4, Chapel Walks, Manchester.

MCARTHUR, WILLIAM BRASH, City Chamberlain's Office, 285, George Street, Glasgow.

MALLINSON, JOSEPH HARRISON, Clerk to W. S. Cunliffe and Co., 40, King Street, Manchester.

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PARTRIDGE, ERNEST REGINALD, Clerk to Holroyd, Northcott & Co., 6, Great Winchester Street, Old Broad Street, London, E.C.2.

PLACKETT, LESLIE HERBERT THOMAS, Clerk to Page, Simpson, FitzGerald & Lambert, Essex House, High Street, Stratford, London, E.15.

PRYOR, ALBERT HENRY, Clerk to Stanley F. Stephens and Co., 16-17, New Hibernia Chambers, London Bridge, London, S.E.1.

RICE, GEORGE FREDERICK DAVID, Clerk to James Todd, Adams & Wilcock, 381-399, Salisbury House, Finsbury Circus, London, E.C.2.

SAYERS, GEORGE FRANK, Clerk to Norman D. Vine & Co., Pearl Chambers, East Parade, Leeds.

SHAH, AMRITLAL JETHABHAI, B.Com., Clerk to Damania, Panday & Bajan, Petit Building, 359, Hornby Road, Fort, Bombay, India.

SIMS, ARTHUR LESLIE BEDDOE, Clerk to Brinley Bowen and Mills, 22, Wind Street, Swansea.

SMITH, ALEXANDER, H.M. Inspector of Taxes, Harrogate District, 23, Victoria Avenue, Harrogate.

SOMERVILLE, CHARLES EDWARD BRANSCOMBE, B.Com., Clerk to Peat, Marwick, Mitchell & Co., 11, Ironmonger Lane, London, E.C.2.

TAYLOR, PHYLLIS ETHEL, 53, Park View Crescent, New Southgate, London, N.11 (formerly Clerk to J. W. Lussignea, 64, West Smithfield, London, E.C.1).

THIRSK, COLIN, Clerk to Leslie Lewis (Ransom, Harrison and Lewis), 22, High Street, Sheffield.

TOOTHILL, HENRY GERALD, Clerk to Henry Toothill and Son, 9 and 11, Figtree Lane, Sheffield.

TRUSCOTT, THOMAS OLVER, Clerk to J. H. Chown, Lloyds Bank Chambers, Penzance.

WATTS, THOMAS WILLIAM, Clerk to Hood & Hopkins, 155, Albert Road, Middlesbrough.

WEATHERILL, LEONARD OWEN, Travelling Continental Auditor, Gillette Industries Limited, 197-207, City Road, London, E.C.1.

WORRALL, CHARLES, Clerk to E. J. Wolstenholme and Clemence, Crown Chambers, 36, Yorkshire Street, Rochdale.

Obituary.

THOMAS MASON DAFFERN.

We regret to announce that Mr. T. M. Daffern, F.S.A.A., died at his residence in Coventry on July 25th, at the age of 76. Mr. Daffern had been in public practice since the year 1896; previously thereto he was secretary and accountant to the Leigh Mills Company at Coventry. He became an Associate of the Society in 1895 and a Fellow in 1917. For over 50 years Mr. Daffern was closely associated with the building society movement. He was one of the founders 48 years ago of the Coventry Permanent Economic Building Society, of which at the time of his death he was director.

THE ROYAL MAIL STEAM PACKET COMPANY.

Trial of Lord Kylsant and Mr. H. J. Morland.

(Continued from August Issue.)

FINAL SPEECHES OF COUNSEL AND JUDGE'S SUMMING UP.

EIGHTH DAY'S PROCEEDINGS.

SIR JOHN SIMON FOR LORD KYLSANT.

Sir John Simon said that the jury would, he was sure, be glad that they had now reached the closing stages of the trial, and he was sure that during the course of the case they had felt a little weary when matters which were discussed were gone over again, but he must deal with one or two of the most important points further in order to give his explanation on behalf of his client.

Sir John Simon continued: "I have, as you realise, resting on my shoulders a very grave responsibility, as grave as any that has ever rested upon me in my professional life of some thirty years." Continuing, he said that he was sure the jury would forgive him if, in the course of his closing address, he referred to some things which they might already feel were familiar to them. He only desired to do his duty simply and clearly, and that duty required that he should, even at the risk of being thought wearisome or redundant, present to them a connected view of the matter, which, if it commended itself to them, he invited the jury to bear in mind until the end. The first thing he wished to say was that the jury should realise and have in their mind that on each one of the three counts of the indictment both the two counts which affected Mr. Morland and the third count regarding the prospectus which affected Lord Kylsant alone, on each one of those three distinct counts it was necessary to prove each one of them. If it were proved at the end of the case that any one of those three counts was in the judgment of any one of them not adequately proved, they were bound to acquit the defendants. What were those three things? They were three elements in the charge. Counsel did not agree that the view was that if the first of those matters was established, the other two would follow automatically. The question was, was it proved to their satisfaction that in a material particular a false written statement had been made? He was going to submit to the jury reasons why that was too harsh a view.

Counsel had pointed out, and he thought his Lordship would confirm him in his view—leaving aside for the moment the effect of what was stated—the criminal section under which Lord Kylsant was brought to the Old Bailey with his liberty in jeopardy was not a section which had to decide the extent of disclosure. They might be matters, very proper matters, for a different tribunal. But there in that Criminal Court, dealing with that section of the Act, the first issue was not an issue as to whether it would be proper or wise, good accountancy or good business, to provide additional details. The question was, was there in that which had been stated in writing, a material particular on which the jury or anybody could put their hands, and say that it was false?

Secondly, in respect of each count of the indictment, the jury had to say, before they could convict, if any holes could be picked in a material particular in what had been stated in writing, and they must be satisfied that Lord Kylsant knew that he was putting forward a written statement, and a statement which was false.

Counsel said he might perhaps be permitted to submit to his Lordship and to the jury through him a consideration. One could well understand that the view might be advanced that that section, when it spoke of falsity in a written statement in a material particular, might cover the case, not only by what was stated sentence by sentence and figure by figure, but would cover also what might be regarded as the effect of what was stated.

"Let me suppose," said Counsel, "that you have a business man who has, as a matter of fact, entrusted a good deal of the accountancy side of the business to others, and that you may have before you a man holding an honourable position, and may not in every respect have had a clear and pellucid view of every detail of the income figures of his business. Is it proved that he knew that this, which has now been analysed for ten days in the Court, is false?"

The Judge: That is an important matter for the consideration of the jury.

Counsel went on to say that when Lord Kylsant was in the witness box, he asked him if anybody could pick holes in the prospectus. Counsel asked him, "Did you know that what you were putting forward was false?" After all, a man on his trial was entitled to have some regard paid to his answer. Lord Kylsant's answer was, "No, I believed what I was putting forward was true. I did not intend to put forward what was false."

Sir John Simon asked the jury, and every one of them, to attach to that statement the necessary weight for such an answer.

Let it be supposed that, as a result of the preparation of the case, it could be shown that there was something false. Of course he denied it. And let it be supposed that it was something which Lord Kylsant knew to be false. He also denied that. This tremendous question remained, and was essential: "Is that which has been stated, been stated with the intent to deceive?" That meant that Lord Kylsant was a rogue. No one of the jury would be justified, in Counsel's submission, in returning a verdict, in the discharge of their duties, against Lord Kylsant unless every one of them reached the conclusion that that was the intent.

Sir John Simon, continuing, said he wanted to say a few words about some of the surrounding facts. The members of the jury had been most patient in listening to a great deal of detail in the case, but that had to be so. They must not fail to appreciate the real issues of the case by being lost in the wilderness of detail, and they must not fail to realise the strength of the criticism which had been advanced by the defence in that Court in reference to the case for the prosecution.

The jury would, he hoped, still bear in mind the matter which he mentioned when he opened the case to them, because he was not going to repeat it. He had the less reason to repeat it because the trial was now proceeding to the end. Counsel pointed out to the jury that, when it was decided to institute the criminal proceedings, certain facts were gone into. He would not say that the Crown was not entitled to change its attack, because the matter must be investigated from every point of view. When the case was first regarded by Lord Kylsant, who found himself summoned to appear before a Court, the Crown said that the company in 1926 had made a trading profit according to the accounts. That was pure confusion. It was now plain to everybody that the profit and loss account was not a trading account of the company. When the case was first presented, it was made a specific part of the imputations directed against the two gentlemen in the dock, that "Adjustment of Taxation Reserves" meant a small modest adjustment. If that was the view which was ever entertained by the prosecution, it was completely exploded by their own witnesses. Mr. Morgan pointed out only yesterday that the use of the expression, combined with the reference to dividends of allied companies and combined with the reference to depreciation of fleet, followed by the word "&c.," was in

his view an indication that in the circumstances what was being brought in was not small but large. Lord Plender had also said that there was absolutely nothing in the words which would justify anyone saying that it would mean something small.

Counsel was bound to say that he was not content to leave the case without pointing out how it had been transformed. The first point was that the Crown had had an opportunity of studying the material for many months, and when the Attorney-General came to the words "adjustment of taxation reserve," he suggested to the jury in his opening, and he was expressing the view which the Crown then entertained, that that phrase was deliberately prepared and chosen as a phrase, and that it betrayed an uneasy conscience. The Crown could have had the best accountants in London to assist them if they had liked. As a matter of fact, the jury now knew that that phrase, whether right or wrong, was a phrase which was constantly employed by accountants of the highest authority, and was a phrase which Mr. Morland had himself suggested and was adopted. It was not Lord Kylsant's selection. Whether it was a desirable or undesirable, an adequate or inadequate, an apt or an inapt phrase, the Crown ought to have known that it was a phrase that accountants often use, and it was not to be attributed to Lord Kylsant. It was not an invention of somebody with an uneasy conscience. Counsel said he dared say that a good many people would learn much as the result of this case, but that last suggestion was a horrible suggestion, because it was suggesting that Lord Kylsant said, "We have some things here we must be very careful about." The jury knew now that the whole of that suggestion had been disproved in the course of the case, and Sir John Simon added, "I make this observation, that this is a matter which the Crown could easily have ascertained if they had taken the trouble to do so."

Continuing, Sir John Simon said that as late as the sixth day of the trial, when Lord Kylsant was being cross-examined, and some questions were being asked about the Pacific Steam Navigation Company, there was made an imputation which was an injurious one. It was said that in the year 1927 Lord Kylsant, in order to qualify himself for his commission, did certain things. That was the sting of it. It was said that Lord Kylsant brought in from the Pacific Steam Navigation Company a dividend of some £60,000. The suggestion was that £10,000 was paid in cash and £50,000 was not paid in cash, but the balance was used for subscribing for shares of the White Star Company, leaving in the year 1927 a great liability. That was being advanced by the Crown with so much art that he (Sir John Simon) had interrupted, and had said that there was a misapprehension about it. The Attorney-General, however, put what he thought to be the position. The fact was that that which was being referred to never occurred in the year 1927 at all. Then, again, it had nothing in the world to do, and could not have anything to do with Lord Kylsant's commission, because in 1928 Lord Kylsant did not take his commission.

Sir John Simon then referred to the shorthand notes regarding the examination of Mr. Manning, and he read several questions and answers which were heard during that gentleman's evidence. He added that the point was no more in relation to Lord Kylsant's commission than his own fees were in the case. There was absolutely nothing in the point at all. Mr. Pritt, he said, when he came to the cross-examination of Mr. Manning, realised that a blunder had been made. Everybody made a blunder at some time or another, and Sir John Simon said that there were more blunderers in the world than there were criminals.

Counsel said he would then like to refer to the story about the Nelson dividends, or the £300,000 which came in as a form of bonus which was nothing more than a lump dividend. A sum of £200,000 came from one company and £100,000 from another. Counsel found that in the shorthand notes there was a particularly injurious passage when a question was asked, "It might have been very inconvenient for the Nelson Company to find the cash to pay the cash bonuses." The suggestion was made that the company did not possess the cash at the time. Sir John Simon wished to call the jury's attention to the evidence of Mr. Cason, who was asked, "Tell the members of the jury, so far as you know, had the Nelson Company the money to pay the £300,000 in 1927, £200,000 from one company and £100,000 from the other?" Sir John said that Mr. Cason's reply to that question was "Yes."

There was not the slightest doubt, said Sir John Simon, when one looked into the matter, that the Nelson Company had made a very large sum in profits, and there was just one question which occurred to the mind of Mr. Cason, and that was whether it was right, and technically right, when they were paying a very large amount to the R.M.S.P., as to whether it should be paid in the form of a bonus or whether it was right to declare a dividend of so much per cent. Sir John Simon said that he had questioned Mr. Cason with regard to that point, having pointed out that the Nelson Company at the time had done exceedingly well and had a very large fund available for distribution. Mr. Cason said that he took advice as to whether it would be technically right to declare an ordinary dividend and distribute the rest by bonus, or not. Mr. Cason had agreed that it was nothing more than a lump sum bonus, and when Counsel asked him, "You satisfied yourself that that was technically correct," he said, "Yes." In reply to another question, Mr. Cason had said that he had asked Mr. Morland's advice with regard to it. Mr. Cason never entertained any doubt about the matter at all, and it had nothing whatever to do with Lord Kylsant.

Sir John said he wanted the jury to look at the case really thoroughly, because he realised the enormous danger that a man ran when mistakes of that sort were made. There was a great deal to be said, perhaps, with regard to a larger and fuller statement. But that was, of course, a question of the degree of disclosure. The new Companies Act had been passed in 1929, but what was perfectly certain was that the date or dates the jury were now investigating were 1926 and 1927. There was nothing even in the new Act to call for further disclosure, and the section of the Larceny Act says, you shall not play the rogue when making written statements by putting forward statements which are untrue in a material particular to your knowledge.

Sir John Simon said that with regard to income tax credits or reserves, he had done his best to master them, but in the heat of advocacy and in his desire to discharge his duty he might have overlooked matters which ought to be allowed for. He wanted to put his case as a simple case, because that was the best way. Let them suppose that the whole of the investments were in one single subsidiary, and that that subsidiary declared a dividend which gross would be £100. Of course the subsidiary would deduct tax and would discharge its obligation if it paid £80. Then in those circumstances, if everything else was square, it was possible for the R.M.S.P. to declare in its turn a dividend of £100 and to pay £80. One way in which they might set out those facts would be to say "dividends from investments, £100," and then to keep an income tax ledger in which would be debited on the one side the £20 which they had to forego, and they would credit themselves on the other side with the £20 which they kept back when the dividend was declared. The income from investments was stated net. If they were stated net, then they did not need to bring in the special credit due to the fact that when they paid dividends themselves they deducted the income tax. They only needed a special credit, so far as it arose from deducting the income tax, when they had paid it in order to set it off against the debit which was really the money and which was not in fact received when they received the dividend from the subsidiary.

Sir John Simon then referred to the figures representing dividends which had appeared in certain of the documents exhibited in the case, and observed that if it had been stated that dividends brought in a gross amount of £540,000, the immediate result would be that it would be necessary to debit the income tax ledgers with a figure

representing the difference for income tax and set off a special credit. It was quite fallacious to treat the gross sums as if they were really brought in unless they were taken as a gross figure, and not a net figure. Then, if that was done, it would look as though there were being brought in larger sums than were actually received. It was necessary, when the gross figure was introduced, to set off the amounts which were deducted by the subsidiary companies before the Royal Mail Steam Packet received them. The same deductions were set off when the company itself distributed a dividend to its own shareholders. Counsel said he was not saying that the figures which appeared in the exhibit in question were incorrect. They were correct as figures, but they could have been raised in other ways, and look different. They were a useful form of record, but the jury should not perpetrate the gross injustice of misunderstanding what was really meant to be conveyed. The Crown was not entitled now to say that, so far as the income tax figures were concerned, they were not amounts which were received in the year in which they were carried to the profit and loss account of the company, and distributed. Counsel reserved for the moment the question as to how far they might be regarded as non-recurring and special items. It was not true that in the critical year of 1926 sums were being drawn out of an income tax reservoir. If such had been the case, the result would have been that by the end of 1926 the reservoir would have been more empty than it was at the beginning. That was not the case. As a matter of fact, by the end of the year, the reservoir was fuller than it was at the beginning. It was manifest to everybody that there must have been a mistake made. Sir William McLintock very honestly and candidly said he recognised the fact when it was pointed out to him. Those items were things which arose out of a particular year, and were distributed in that year.

He did not propose to delay the jury with a long exposition regarding the E.P.D. items. He hoped by that stage the jury had the matter quite clear to them. It was absolutely untrue to say that in 1926 and 1927 the E.P.D. transfers were transfers from some former reservoir. He could forgive anybody, whether it was the Attorney-General or anybody else, for not getting the facts in relation to that matter quite right at the outset. They were now on the eighth day of the trial, and it was time they realised where they were. He was not shirking the matter at all, but he believed, now that it had been really looked into, it would be seen that it was not one of those dangerous points which a Counsel for the defence was wise to avoid. In fact, it was a vindication of what had been done. There was another exhibit, containing seven figures, which showed that sums were, in fact, carried into the profit and loss account of the company. In 1921 nothing whatever was carried to the profit and loss account, but there being about £300,000 which might have been carried, it was used, instead, to write down investments. In other words, it created a further internal provision. That was much better than distributing the money to shareholders. Once a company had distributed money to shareholders, they could not get it back. It was impossible to get butter out of a dog's mouth. In 1922 the matter had clarified to the extent that the company was able to transfer £100,000 to the profit and loss account. Those two figures totalled £400,000, and very nearly exhausted the whole of the excess provision which had been made by reserving £2,260,000 for E.P.D. If there had never been such a splendid invention as obsolescence allowance, or such a thing as deferred repairs, they would still have had that tax which fell on the backs of companies who made excess profits.

The situation was that the reserve which was made for E.P.D. by the company turned out to be some £400,000 or £500,000 more than was needed. That being so, in the years 1921 and 1922 the reserve was practically exhausted. Where, then, did the money come from which was found to be transferred to the profit and loss account in 1923, 1924, 1925, 1926 and 1927? From the beginning to the end of that case the statement had been made, and insisted upon, that it was a drawing away from a reservoir of reserves. He invited the jury to see what it really was. It had absolutely nothing to do with what had been stated. The Government repaid certain amounts. Strictly speaking, it was not so much repayment as payment. There were payments by the Government. In 1923 the amount was a quarter of a million pounds. Governments did not draw cheques, but gave things called Treasury Warrants, or something of the kind, and they were paid into the bank. In 1923, £100,000 of it was taken to the profit and loss account. In 1924 the Government paid £390,000. In that case they were dealing with "astronomical" figures, and he did not know what those concerned with the case would do when they left the Court, and entered an omnibus. (Laughter.) In that year there was transferred to profit and loss account £330,000. There was no actual further repayment in 1925, but the deferred repairs arose. Therefore, the accountants knew that in the year 1925 it was perfectly right to transfer £300,000. In 1926 the Government paid an additional £270,000 There were other smaller repayments, and there was transferred £550,000. The total amount received from the Government in the way he had mentioned was £920,000. To that sum had to be added the amount of £550,000, bringing the total up to £1,470,000, which was practically the same amount as was transferred to the profit and loss account from 1923 to 1927. He had from the outset dealt with that aspect of the case with the greatest bluntness and plainness. Once the jury understood the accounts relating to the matter, they would see that in the years from 1923 to 1927 it was not true to say that the company was ekeing out its profit and loss account by drawing on an earlier reservoir. On the contrary, the company was receiving year after year, from the Government, great sums which were distributable, which were perfectly proper to distribute as profits, and which were distributed as profits. "I am," said Counsel, "at a loss to understand the difference between receiving in the year 1924, let us say, £390,000 paid by the Government, and receiving £390,000 bonus, or dividend, or anything else you please. I have not had the advantage of being a senior wrangler, but am a man who tries to understand figures. I do not understand at this moment what is meant when it is suggested by those eminent gentlemen who support the case that in 1926 or 1927 the company was living on its 'old fat.' Where does the fat come from? It comes, at the time, from the Government as a payment. It is as fresh as any payment made at that time from any other source." It had been said that the Government was not going on making payments for ever. He would deal with that matter, and hope to make it plain that there was a complete misunderstanding to say, as was stated at the beginning of the case, that the figures which had been referred to ought in no way to appear where they did. They might ask themselves why the figures should not appear. Why should not the sum of £550,000 appear where it did? He had not the faintest idea, once the figures were understood, why the amount should not appear in the account to which it was put.

The Judge, referring to the income tax, asked if the accounts of the company showed the debits and credits, and Sir John Simon replied in the affirmative.

The Judge said he had not seen any such document exhibited during the case, and Counsel added that it was a difficult matter to follow, and not easy to explain.

The Judge: It is not in the income tax reserve account.

Sir John Simon said the information appeared in one exhibit before the Court. That exhibit showed an entry of "Interest on investments for 1926, £611,798." On the other side, or the debit side, there was "To income tax on investment income." He was not challenging the accuracy of the figures. Another entry to which he had referred did not, however, show a receipt for the full amount, but for the net amount. There was a sum of £52,000 deducted from the £611,000.

His Lordship: I think I follow; I am not quite sure I appreciated what effect it had in the result.

Sir John Simon: If, for the moment, you regard your income from investments as gross, then there are two items which are set off. One is the debit, being in fact that portion of the gross dividend which you must forego, as it is stopped at the source. Against that you have the credit, that when you distribute you yourself stop something. Those two things are on opposite sides of the account. It is open to you, therefore, to settle the thing in one of two ways. The debit and credit may cancel one another out. You can speak of receiving your dividends net or gross. In the latter event you must allow the debit against that gross figure to be set off against the credit. Exhibit 21 gives income tax reserves and represents what the company may credit itself with, but you have not the sum which might be set off against it. The true accountancy position is that you should regard yourself as receiving from the subsidiaries the interest gross. You should then proceed to debit yourself with that which has been deducted at the source, and then credit yourself when you proceed to pay.

The Judge: The other possible view is that your own dividends are quite a separate matter. I shall look at the income tax reserve account.

Sir John Simon continued his address to the jury, and again referred to the question of the excess profits duty. The jury would, he declared, see that from 1923 to 1927, so far as the E.P.D. figures in the profit and loss account were concerned, that they were not drawn from any vintage year. The items were in fact represented by receipts which the company were getting at the time. When the company received the money it was passed to the profit and loss account. The jury had still to consider the point whether or not, in view of the fact that the Government would not go on paying those amounts for ever, some indication should be given. It was said that those were payments by the Government which were not necessarily recurring ones, and he wanted everybody to get rid of a complete delusion which was perhaps illustrated by the Attorney-General in opening the case, when he said that the amounts should not appear at all where they did, as they in no way related to the year.

He ventured to suggest that one result of the case was that they reached the plain view, whether disclosure was adequate or inadequate, that it was quite a mistake to suppose that the profit and loss account was being fed from some fund which was an ancient reserve. That was not the case. The profit and loss accounts during the years in question were being fed from sources which should be regarded as rising in the course of the year. A point of some substance and validity had been raised. It had been said that they might treat matters which arose in a year for distribution in the course of that year, but they were not the sort of items which would go on repeating themselves. To that there were, at any rate, a couple of very adequate answers. First of all, it had been pointed out that it really was a misuse of language to say that those things did not recur at all, as the payments from the Government were spread over a period of years. It had been said that the payments constituted a series of contributions which were about to terminate. An observation had been made by several accountants that when they were dealing with a great firm like the Royal Mail Steam Packet Company, all sorts of things called recurring and terminable items were coming in. As a matter of fact in a great company like the Royal Mail all sorts of things might be regarded as exceptional or non-recurring, and as likely to terminate, but nevertheless they came in. Ships were sold, premises were disposed of, and bonuses were paid. On the other hand, there might be exceptional losses. Counsel was sure that the jury had in mind the evidence of accountants, and it had been stated that in dealing with accounts of great companies like the Royal Mail a distinction was not drawn between what were called recurring and non-recurring items. That was in itself a sufficient answer to that part of the case. There was, however, a second answer. They must not look at the position as it existed in 1927 with the eyes of 1931. They must look at the position with the eyes of 1927. Whatever else might be doubtful in that case when it was finished, he thought the jury would be satisfied that Lord Kylsant did honestly believe that the shipping business, which had its fluctuations, its ups and downs, and its cycles of trade, firmly held the view and expressed the opinion in 1927 that the worst was over. He then thought things were mending. The year 1925 had been better than 1924, and 1926 was better than 1925.

Could anything be more unfair than to turn around on Lord Kylsant in 1931 and say, "You ought to have known that things were going down, and not up." In addition it was unfair to ask, if things were going down and not up, what was the position when the E.P.D. repayments ceased? Lord Kylsant's answer was that he, in common with many others in 1926 and in 1927, was perfectly satisfied at having got through the previous ten years, a cycle of good years and bad years, and believed things were improving. They might ask what was in Lord Kylsant's mind when he thought he was justified in transferring the sums which came from the Revenue and distributing them. His answer was that at the time there was every indication that the company would be gradually restored to its normal prosperity. That being so, there was no reason for him to reproach himself for what was done. Lord Kylsant was not doing what people sometimes did—distributing to-day what he hoped to get next year. There was not a penny distributed that was not already available. All in that Court knew the sanguine temperament which led people to take money in the hope of backing a winner, returning what they had borrowed, and making a fortune. That was not the kind of case the jury were investigating. Every item received which was distributed was properly distributable. The company was not going to live on the Government's obsolescence allowance, but it was not known that it was going to stay in the trough of the wave.

Sir John Simon next referred to a speech made by Lord Kylsant in May, 1927, remarking that the report of that meeting of the company was the best available document to show what was then the state of Lord Kylsant's mind. They would all realise how fatally easy it was to argue backwards. In May, 1927, Lord Kylsant said that the accounts of the company reflected the abnormal condition which appertained during the previous year, as a result of the general strike and the prolonged coal stoppage. He also pointed out that the operating expenses were substantially higher. At that time Lord Kylsant was not presenting to the world a glowing picture. What he said was what the accounts disclosed. In 1927 Lord Kylsant also said, "There is a widespread feeling that the worst is over, and we may justifiably look forward to more settled and prosperous times." He also pointed out that he was a believer in cycles of trade. In 1927 Lord Kylsant thought there were distinct signs of recovery. He then had every ground for believing that the company, which had had prosperous and moderate years, and depressing years, had already begun to recover. It was also of interest to see what was stated at the same meeting by Sir Fortescue Flannery, a shareholder in the company and one of the people who was supposed to have been deceived. That gentleman stated in 1927 that it was true they had not had a good year, from the point of view of the profit and loss account.

Counsel went on to say that he had never taken the view of the case that the prospectus, properly understood, involved a different question, or a different issue. He invited the attention of the jury to the language used in the prospectus. It was there stated, "Although this company, in common with other shipping companies, has suffered from the depression in the shipping industry, the audited accounts of the company show that during the past ten years the average annual balance available (including profits of the insurance fund), after providing for depreciation and interest on existing debenture stocks, has been sufficient to pay the interest on the present issue more than five times over." It was an absolutely accurate statement. It might be said that in the early part of those ten years trade was unusually prosperous and that in the latter part the company, of course, suffered from extreme depression. If it was said that the

prospectus should give some indication that towards the end of the period things were below the average, the answer was that such an indication did appear. The prospectus stated very clearly that the company had suffered through the depression in the shipping industry. He could see no difference whatever between a cricketer saying in the middle of the season, "My average is 50, but recently I have been very much out of form," and the company saying, "My average for ten years is £500,000; recently the company has suffered through the depression in the shipping business."

"Are we," asked Sir John Simon, "really to treat people who read these documents as a lot of babies who did not know that the shipping and other industries were greatly depressed in the year 1928? Is it really the case, and tolerable, that in those circumstances Lord Kylsant should be put in a criminal dock and prosecuted on such a matter when manifestly the document does not state anything which is false, still less false to the knowledge of Lord Kylsant?" What could be more fair than to have in the prospectus a period of years which illustrated the whole cycle of trade? The prospectus was issued at a time when the dividend of the company had been decreased and £150,000 was taken from reserve. What more could anyone do? It was said that if detailed figures had been properly worked out they would not have been, year by year, exactly the same as those which appeared in the profit and loss account. That was quite true. The Judge had already pointed out that that would be a material thing to consider if the prospectus was one which stated the figures year by year. If a prospectus was stating an average, the material thing was the total truly divided by ten. It was admitted in the case that the average appearing for the ten years was correct. The statements in the prospectus were absolutely correct, and it would be wrong to attribute to 1927 the sad knowledge which was possessed in 1931. Lord Kylsant, in the prospectus was putting forward a document which he believed to be true. The prospectus dealt with the issue of second debentures in the company. The claims of the holders of those debentures would come in front of any ordinary or preferred dividend. The only thing in front of the holders of those debentures was the first debentures. The company already possessed second debentures to the extent of £3,000,000 and there was a further issue of £2,000,000. What was there to protect the holders of those debentures? In considering that matter they might look to the balance sheet of the company for 1927. That showed the book value of the fleet, and investments in shipping and allied companies of £16,366,000. If anyone was considering investment in the company, that was the figure to which attention would be devoted. It had also to be remembered that the book value of the fleet had been written down with unnecessary severity, and the interest had been paid on the debentures.

The position of the Royal Mail Steam Packet Company had been canvassed and discussed in all quarters, and columns relating to it had appeared in the financial press. When Sir William McLintock was called in, what value did he put on the security for the second debentures? When he made his report and valuation, he said that on a twenty years' life—taking 5 per cent. depreciation—the value of the combined fleet was £15,000,000. That figure of £15,000,000 was really comparable to the £16,000,000 appearing in the balance sheet. The latter figure included, first, the ships that belonged to the Royal Mail Steam Packet Company and, secondly, the investments in the subsidiaries. There was an enormous block of solid value lying behind the debentures. Was there any solid reason for saying that it was a matter in which a criminal charge should be investigated? It would be realised that that criminal prosecution, directed at Lord Kylsant and Mr. Morland, was an investigation by the Court of an aspect of the matter which, it was suggested, constituted criminal liability. It was idle to shut one's eyes to the fact that there was the possibility of a prosecution arising on what was called civil liability. Counsel made no sort of admission, but the jury should remember that distinction. Lord Kylsant had colleagues on the Board. The jury had heard the names of some of those gentlemen. If civil proceedings arose, those gentlemen might very well find themselves made defendants along with Lord Kylsant. He thought the jury would appreciate that those gentlemen, consulting their own private interests, might well desire to be protected at that trial. It would also be realised that the gentlemen in question were not mere guinea pigs, leaving Lord Kylsant to do what he liked, and merely drawing their fees. Lord Kylsant, in that Court, was prepared to answer for his own responsibility. During the trial he had not tried to shoulder his responsibilities on to anybody else.

For a man to say things which were false, knowing that they were false, and with intent to deceive, and with intent to mislead, was to act as a rogue, and be unfit to hold the respect of decent people. "In this Court before to-day there have been directors in the dock against whom it has been proved that they have duplicated documents, and by that means have received money from different people fraudulently and corruptly. That is not this case. In this Court before to-day there have been directors and accountants who have been shown by the evidence to have been engaged in falsifying accounts, and making entries which were not true. That is not this case. In this dock before to-day there have been directors of whom it has been proved that they had been squandering the capital and resources of their company, instead of limiting themselves to distributing that which was properly distributable. That is not this case. In this dock before to-day there have been directors against whom it has been proved that while they were telling a smooth tale to the public they were secretly realising their investments. That is not this case. I cannot imagine a greater proof of honesty than this, that Lord Kylsant, who knew everything, apart from the details of the accounts, in respect of this prospectus and the issue of second debentures, subscribed his own money and authorised applications on behalf of those for whom he was trustee. You will say, if indeed he is a rogue, he is the meanest rogue that was ever produced in a Court of Justice. I ask you to take a different view." Having been put to the torture of that case, Lord Kylsant was entitled at the hands of the jury to a verdict which was right and proper. They might debate whether Lord Kylsant was a very clever man or was a man who, at the end of a long and distinguished career, had thrust on his shoulders burdens which only the highest form of intelligence could deal with. The verdict that Lord Kylsant was entitled to at the hands of his fellow countrymen was that in that matter he had been an honest man.

Sir Patrick Hastings for Mr. Morland.

Sir Patrick Hastings next addressed the jury on behalf of Mr. Morland. He had, he said, had considerable doubt as to whether he could address the jury again, having regard to the fact that it was only a short time since he put forward the case of his client. He thought that he could say all that was necessary in a very short time. He proposed, in his observations, to mention a matter which was really worthy of consideration as a pure question of fact. When the Clerk of the Court read out the charge, it was brought home to the minds of the jury that the charge was that of being an accessory or with aiding Lord Kylsant. At the moment the matter was not quite clear to Counsel. He was not quite sure what it was that Mr. Morland was supposed to have done. He desired them to consider one outstanding fact in regard to the use of the words, "Adjustment of taxation reserves." Was it that which was referred to, or something else? It was just a little odd. Mr. Morland certainly did not aid Lord Kylsant to put those words into the balance sheet. Lord Kylsant did not want them in at all, or he did not care whether they were in or not. It was Mr. Morland alone who put in those words. He had all along been a little puzzled to know exactly what it was that was suggested against Mr. Morland.

The jury had heard Mr. Morland say that when he made suggestions, he expected them to be carried out. The Attorney-General had asked Mr. Morland whether he

would have signed the balance sheet without those words being included, and he replied that he did not know. If Mr. Morland had made suggestions and they were not carried out, he would certainly have had to consider whether he would sign accounts. Nobody could suggest that Mr. Morland aided Lord Kylsant to put the words in the balance sheet. Lord Kylsant had nothing whatever to do with it. One might consider whether or not the words referred to made the balance sheet better or worse. He understood the suggestion was that without the words the balance sheet would be misleading, but in addition the words themselves were not sufficient. It was said that they would only get sufficient words if they used those which appeared in the balance sheet in 1928, "Crediting income tax reserves." According to the Attorney-General, that would have been sufficient. All of them might have their own view as to whether the word "Credit" was better than "Adjustment." Anyone might make an assumption on that matter. The question the jury had to consider was what was the proper meaning to be given to every word. He did not want to go back to the evidence, because he had already read certain passages to the jury. It must, however, strike them as odd that not a single witness had ever suggested that the words on the balance sheet were misleading. He knew very little about the criminal law, but would ask whether it struck the jury as singular that not a single soul, not a shareholder, servant, director or lawyer, had come before the Court and said that the words had misled him. On the contrary there had been a large number of witnesses who had come before the Court, and every one of them, as far as he understood the matter, had said in the clearest possible manner that the words were not misleading.

The only witnesses Mr. Morland had had the opportunity of calling in regard to the matter were members of the profession who were accustomed to dealing with accounts. Those witnesses had not exhibited the slightest diversion of opinion. Mr. Manning thought that the words were the proper ones to be used in the circumstances of the case. Mr. Hill, the President of the Institute of Chartered Accountants, said the same. Mr. Morgan, the President of the Society of Incorporated Accountants, also told them the same. In addition they had the evidence of Lord Plender, the leading and the first witness for the Crown, who also told them the same. Was it quite fair that there should remain, at least in that case, the theory that the words which everyone said were right—both the prosecution and the defence—and were deliberately chosen by Mr. Morland because they were right, was it fair that the use of the words should now be criticised? The Attorney-General had suggested, on behalf of the Crown, that the use of the words, "Adjustment of reserves" was misleading, and it was said that, if the facts had been disclosed, there would have been an alteration in the price of the shares of the company. When the balance sheet was issued, there was not any great variation in the quotation. It had to be remembered that when the balance sheet for 1928 was issued, and the words which it was said were correct appeared, there was no great variation in the price of the shares. In other words, when the later balance sheet appeared, the share quotation was equally constant. He did not know whether the suggestion was that the words "Adjustment of taxation reserves" were correct for an accountant, but in some way they were limited and not meant for an ordinary member of the public. Immediately that was brought to the notice of the defence, their attention was also called to the criticism which appeared of the accounts for the year 1927, when it was stated, "Evidently the accounts for the past two years include certain undisclosed taxation credits."

"I cannot see," said Counsel, "what it is said Mr. Morland did wrong. Further witnesses had been called who stated exactly the same thing. There is not a dissentient view. There is not a particle of evidence, a document, or anything else, against Mr. Morland. Everybody, whether it was the witnesses for the prosecution, or the defence, or the views of the public in the shape of newspapers printed at the time, they all say that he did right. Now, at the last moment, if there is a point to be dealt with, I will try to deal with it. If there is a point, I don't know where to look for any evidence or suggestion that this gentleman has done anything wrong." The suggestion might be that the whole balance sheet, in its essence, ought to have told the shareholders something more. Mr. Morland has been cross-examined on that point, and other witnesses who had been called had stated quite frankly that if they had been in the position of Mr. Morland in 1927 they would have done exactly the same as he did. Those gentlemen admitted that they would have signed the balance sheet. Counsel thought that every man was proud of the position he occupied in his profession. No gentleman who occupied a great public position was going into the witness box to commit perjury for any purpose. If he did so he would be a figure of scorn to those who had trusted him and helped to put him in the position which he occupied.

Any professional man who was in trouble would be pleased if the heads of his profession, without a single dissentient view, went into the witness box and said that, after consideration, they thought they would have done as their brother professional had acted. It would be an awful thing to say that witnesses who had acted in that way could not carry conviction. Mr. Morland was said to have done something wrong. The heads of his profession, after all, had sworn on oath that he had done nothing wrong. Supposing any of the barristers engaged in that case were being tried for something in connection with their professional duties. What better evidence could there be than for their brother barristers to say that they would have acted in the same manner? Supposing such a case arose, would they turn to the Attorney-General and say that he would do anything for a friend? The Attorney-General would do nothing of the kind, and no one would dream of hinting at such a thing. The profession of accountancy was no lower than that of the barrister. What was it that anybody suggested that Mr. Morland had done? What did Lord Plender say? What did Sir William McLintock say Mr. Morland had done? The Attorney-General might have some explanation of something which Mr. Morland had done wrong, but if he had, it was in the face of the heads of the accountancy profession, in the face of Lord Plender, Mr. Hill, and Mr. Morgan, who had given their evidence in that Court and had stated that they would have done the very thing for which Mr. Morland was standing in the dock. Some time ago he (Sir Patrick Hastings) suggested that, if what Mr. Morland had done was wrong, it would be impossible to get a dock big enough to hold all the accountants who should be tried. The Courts of Law would be full of accountants. During the progress of the case there had been many accountants in Court, and at that moment there were accountants on practically every bench. If there was one witness who could have said that what was done was wrong, for some reason or another, he could have been called. As a matter of fact, no such evidence had been given.

Sir Patrick Hastings said that he had not got the experience of many who were in Court. There were members of the Bar who practised in that Court particularly, and who saw, and were accustomed to seeing, men standing in the dock. He was not. He had been wondering whether, since he had been in the Court, they were not a little apt to forget what they were doing. They were really trying a man for his life. It was life and death to Mr. Morland to be sitting where he was. During the case they had been discussing figures and documents, but they were actually trying a gentleman for his life. To Mr. Morland it was an unbelievable horror, that night after night when those engaged in the Court had gone home, they might think that in the dock was a gentleman, a man who had held his head as high as anybody in the City, but who nightly was only allowed to leave by the permission of the law, and let out by warders. He (Counsel) had struggled to see what Mr. Morland could have done. What could Mr. Morland have done which made it necessary that when he went home every night he must know that when he

awoke in the morning he must surrender into the custody of warders who would keep him in the dock until he was released by permission of the Court? Sir John Simon stated that the case to him was a great responsibility. With him (Sir Patrick Hastings) it was an awful responsibility, and he had struggled to find what point he could deal with, and what he could say to help the jury. He could find nothing. They had before them a gentleman who had, as he was told, one of the greatest qualifications, a good record. Mr. Morland was a man who had walked the streets of London, proud of his career and of the fact that he could sit beside people like Sir Gilbert Garnsey and the other members of his firm. Other gentlemen like Lord Plender and Mr. Hill he met at meetings, and every one of them had been proud and honoured to sit beside him. He (Counsel) and those associated with him had been proud to represent Mr. Morland, but they had struggled to find out what it was that he had done. If the jury thought it was their duty to wait before returning their verdict until the conclusion of the case, they would do so. If they thought he had done something wrong, which made them say he must be taken down the stairs from the dock in the custody of warders, they would say so. He thought, however, they would spend some anxious nights afterwards, wondering if they had done right, unless there was something in the case which he had missed. The jury had in their hands at the moment Mr. Morland's whole career and future. If they thought he was guilty of a crime they would say so. But if they thought that he came into the dock as a respected and honest man, and that he could go out of the dock just as respected and just as honoured, they would say so by their verdict. He could not help the jury any more, except to say that the view he put before them was that it must have been years, if ever before, that into the dock came a man of the position of Mr. Morland, who had sat there and was still wondering what was the case against him. It would be years and years before such a man again entered the dock. He could only beg of them not to be the first jury to say that a man such as Mr. Morland should be convicted of crime.

THE ATTORNEY-GENERAL'S REPLY FOR THE CROWN.

The Attorney-General then addressed the jury on behalf of the Crown. "You have heard," he said, "both my learned friends deliver eloquent and emotional addresses. My task is not to endeavour to make, even if I could, either an eloquent or an emotional address; I think I may say, speaking for myself, that there is no task that causes me personally more anxiety than this one, and there is no strain which I feel greater than the strain I have to undergo and have undergone in the last few days. Sir John Simon has rightly said, in the course of one of his speeches, that there is no question of triumph or victory in a case of this sort. The only triumph for which I pray, the only victory I would achieve, is the triumph of right, and the victory of justice. My learned friends have told you, and have told you quite truly—and I accentuate it here—that these defendants are entitled to the benefit of the doubt. If you have any doubt in your minds as to this case, whatever you may think about their conduct, if you think this case has not been brought home, it is your privilege and your duty to say that either or both of them is or are not guilty. If, on the other hand, your doubts are allayed, and you are satisfied in your minds, it is then your duty, however stern and unpleasant that duty may be, to say that these men, or either of them, are guilty. You hear these moving appeals—I make no complaint about them—references to chains and warders, and to the anxious nights that you may pass; I make bold to say that you will spend anxious nights if you do not do your duty to the best of your ability as God gives you to see what your duty is. There are in this great city many health services, and ample provision is made for what are called sanitary services. Have you ever thought that the function of this Court, and your duty to-day, is what I may term a sanitary service? If you think there has been anything wrong, if you think that these defendants are guilty of the crimes with which they are charged, it is your duty to assist in the sanitary services of the finance of this great city. Whatever differences in politics, and whatever differences of outlook we may have, it seems to me essential to-day that in this city and in this country the confidence of the investor, the confidence of the shareholder who invests in any concern, should be restored. Confidence can never be restored unless the shareholder or the investor feels that what is being put before him is a fair and a frank and honest statement of what ought to be put forward. There is another side to this case which I have considered, and when I hear these emotional speeches I often wish that it should be present in the jurors' minds. I would not endeavour to persuade you to find these men guilty if there were in your minds any honest doubt. On the other hand, it is so easy for a great advocate to make an emotional speech in this Court. It is so difficult sometimes for a jury to think that in these financial cases if indeed there has been dishonesty, or a crime has been committed, it leaves its trail of ruin up and down the country. If you think there was dishonesty here, you cannot doubt that that dishonesty must have left its mark on many a home; although it would be utterly wrong to let that weigh with you at all in making up your minds as to whether these defendants are guilty, it is a reason which will strengthen and confirm you in doing your duty if you think the charge is brought home."

The Attorney-General then mentioned two features of the case which he regretted. The first was the attack—for it was nothing less—which had been made upon Mr. Cason, the chief accountant of the R.M.S.P. Company. The jury would realise perfectly well the difficulty of Mr. Cason's position, and would have observed the scrupulous fairness which he had exhibited with regard to Lord Kylsant. When Lord Kylsant, in the course of his evidence, had been questioned with regard to what Mr. Cason had said as to what had taken place, or had not taken place, when he was with the Court of Directors, Lord Kylsant had expressed the opinion that Mr. Cason's account of what had happened at the Court of Directors was absolutely untrue; he had added that he made no qualification about it, and that he had a very high opinion of Mr. Cason so far as his attending to his job was concerned. It was the duty of the jury to consider which of those two accounts they preferred to accept. Sir John Simon had explained the possibility of civil proceedings; he had explained in his own words that these co-directors were consulting their own proper interests. "I know nothing about their business capacity," said the Attorney-General; "the amount of time they devote to the affairs of this company I do not know, but I have seldom heard a more serious reflection on a body of men than to say that they are consulting their own proper interests, and in the course of consulting their own proper interests are leaving their chairman and colleague alone in this dock; it is a reflection on a body of men which, if true, implies that they have not a spark of courage." Continuing, he said that Lord Kylsant had stated that one of his co-directors used to cross-examine him as they drove together to the City. But why cross-examine him? Cross-examination was a means—though not always a very successful means—of getting an answer to questions. If to this Board of Directors there had been put forward some documents indicating what had been done and what had been transferred from that which, with all due respect to his learned friends, he did not hesitate now to call reserves, what need would there have been for any cross-examination? Mr. Cason's evidence was that on no occasion when he was present—and he was the chief accountant—were these matters discussed. They were not matters which ought to be discussed at luncheon or in a taxicab; they were matters to be discussed at a properly constituted meeting of the Board, with the chief accountant there, and for his part he would have thought that some document indicating plainly what was being done would have been put forward. He submitted that the jury should regard the attack made upon Mr. Cason as being an unworthy attack.

The other matter which the Attorney-General regretted was that throughout the course of the case a criticism

had been made or implied upon Sir William McLintock. Sir William had come into this case with no other endeavour and with no other instructions than to advise the Trade Facilities Committee. He had given his evidence in the box, and the Court had had to wait until almost the last hour to obtain from Mr. Morland the testimony that, having read Sir William McLintock's report, so far as he knew there was only one figure in it that was wrong, and he had hesitated even to call that a mistake. The Attorney-General said he desired to say, in view of what had been suggested, that he considered that Sir William McLintock, both in what he had done and in the way he had done it, had rendered a signal public service. Coming to his analysis of the facts of the case, the Attorney-General said that the jury would realise what an important part the accountancy profession played in our modern life. There was no business enterprise—and after all, the whole life-blood of this country depended on the success of business enterprise—that could possibly be conducted efficiently unless its accounts were properly regarded and properly looked after. He was glad to think that among the members of the jury there was one at least who was a member of this most distinguished and essential profession. He asked them not to think that he was criticising the profession when he said frankly that in the course of this case he had had some misgivings lest members of it sometimes failed to see the wood for the trees. Technical rules of accountancy were admirable things, but they were the letter and not the spirit. It was no good observing merely the letter; the fundamental object of the profession was to ensure that the documents which were produced gave an accurate and true account of the affairs of a business, and to this everything should be subservient. If the documents conveyed to a reasonably intelligent person a false impression, then, although the technical rules of accountancy might have been observed, at the same time the profession had failed to carry out its primary and its obvious duty. The case which he made—with all due respect to Sir Patrick Hastings—was plain enough; it was simply that it was essential that the shareholders, whose concern it was, should have placed before them a true and fair account of what the real position of the company was. The jury had been told, he continued, that shareholders had not been called into the witness box, and they had been told, quite truly, that lawyers had not been called. They had also been told that the accountants who had come had all expressed a certain view. "But," he said, "I protest against the idea that this is a matter for accountants or for lawyers or for any gentleman with technical; skilled knowledge. This is a question for the ordinary man in the street, with intelligence, to apply his mind to. Why have not shareholders come here? Because you members of the jury are selected as representative of the ordinary intelligent man, and it is for you to consider whether this document would have conveyed a clear impression to your minds as to what was going on had you been shareholders. Do for goodness sake let us escape from the idea altogether that the accountants' profession is some kind of mysterious thing, and that you are entitled to use words, in addressing an ordinary shareholder, which might or might not convey a meaning more or less defined to an accountant. That is not the question. The question is, what impression would be conveyed to the mind of the ordinary intelligent shareholder, and, secondly, what impression was intended to be conveyed?"

When he had heard some of the questions which had been asked, continued the Attorney-General, he had wondered whether all was satisfactory. References had been made to accountants discussing whether or not things would have been better if, instead of talking about "profits" for the year, they had talked of "balance available"; he had wondered whether some significance could be attached to the position of the words, apart from the words themselves. Then, when he had asked Mr. Morland a question as to whether the earning capacity of a company was not an unimportant thing, he had been astounded to hear Mr. Morland say that he did not see why. The case he had made throughout—and the case which he had hoped Sir Patrick Hastings had understood after the opening address—was that certainly about the year 1926 the circumstances of this concern were such that the shareholders had a right to know what was going on, that the words which were used in the accounts for 1926 and 1927, whatever their dictionary meaning might be, and whatever their technical meaning might be, were not such as would convey to the shareholders any picture at all of what was going on. It had been suggested that Mr. Hill, the President of the Institute of Chartered Accountants, would have done what was done in this case, and therefore might have been standing in the dock. The Attorney-General then went on to quote from the cross-examination of Mr. Hill, where Mr. Hill had agreed that transfers from a reserve fund were sometimes brought into a profit and loss account without any notification at all, but that there came a stage when some indication must be given. Then Mr. Hill had been asked whether a stage was reached ultimately at which there must be given, not merely an indication, but a perfectly precise phraseology, which no one could make a mistake about. He had replied that he should think so, but that it depended upon circumstances, and that one could not generalise. That was the evidence of the President of the Institute of Chartered Accountants, and it was that test which he (the Attorney-General) accepted in this case. He believed that the test which the law would apply would be a great deal more strict. The learned Judge might think it right later to make some observations as to the extent to which the law was being observed, but in a case of this nature, when dealing not merely with the question as to whether the documents were false, but whether there was an intention behind that falsity, it was right that he (the Attorney-General) should accept the test which had been propounded by the witnesses called by the defence. He accepted the test that sometimes, with regard to comparatively small matters, transfers were made without any notification, for the purpose of levelling out inequalities, but that there came a time when an indication must be made, and there also came a time when there must be not only an indication, but a perfectly precise phraseology. If one put forward statements without that indication where indication was necessary, or without precise phraseology where precise phraseology was necessary, then the statement made did not truly reflect the position of the company, and, therefore, the account put forward was not a true and accurate account, and that was why there was an obligation to give an indication, in the one case, or precise phraseology in the other. The law stated that the shareholders were entitled to have placed before them a true and accurate account.

In the course of his duty—not as prosecuting Counsel, but as the chief law officer of the Crown—he would call attention in due course to certain facts which might, in the view of the jury, differentiate, and differentiate sharply between the case so far as it concerned Mr. Morland and the case so far as it concerned Lord Kylsant. The last thing in the world that he desired was that the jury should lose sight of these differentiating facts. The Attorney-General then drew the attention of the jury to the accounts of 1926 and asked them to bear in mind the test propounded by Mr. Hill, which he accepted throughout, and also to bear in mind the remarks of Lord Kylsant and Mr. Morland when asked whether the company was running at a loss between 1921 and 1927. Lord Kylsant had said, in the course of his evidence, that during those six years the company was not running at a loss. Then Mr. Morland had been asked a similar question, whether, in each of the years from 1921 to 1926 inclusive, the company was running at a loss, when one considered its gross earnings, less expenses (including dividends) and depreciation. Mr. Morland had replied that he had thought there was a possible exception in 1923. Further questions had been asked about this, from which it appeared that, even in the year 1923, when one had regard to debenture interest, undoubtedly in Mr. Morland's view, the company was running at a loss. But this was not a question of Mr. Morland's views; it was a question of plain and obvious facts. The Attorney-General asked the jury to

bear in mind the fact that in the years from 1921 to 1927 inclusive, the company had continued to pay, in every year save one, a dividend of at least 5 per cent., by the utilisation of abnormal credits to the extent of at least five million pounds. He was not going to hold Lord Kylsant guilty, or to ask the jury to find him guilty, because his prophecies had turned out to be false. His accounts for 1927 were prepared at about May, 1928, and the following year, 1929, was the year in which the company had to meet its obligations to the Treasury in respect of its guarantee. He asked the jury that they should have no doubt about this fact, that when he had asked Lord Kylsant if it were true that he had not the ability to pay what he owed, he had replied, "As the Treasury did not extend it, that was the difficulty." The Attorney-General repeated that one year, or perhaps it would be fairer to say sixteen months, after the publication of the accounts for 1927—a year in respect of which a 5 per cent. dividend was paid—the company had to meet its obligation to the Treasury, but the company had been unable to do so. Those were the circumstances. There was the utilisation of the five million pounds over a long series of years, and the fact that Mr. Morland had realised in the year 1925, as he had admitted, that the time had come when an indication should be made. By the years 1926 and 1927 the time had arrived at which—to use Mr. Hill's phrase—if these accounts were truly to reflect the position of the company, perfectly precise phraseology should have been used in order to bring home to the shareholders in this concern—for it was their concern, and the directors were in the position of trustees for them—the abnormality of the receipts which were being used for the payment of dividends. Unless the accounts were qualified precisely so as to indicate the abnormality of the receipts, they would have been false and misleading. That account would convey to the shareholders a wholly misleading impression of the situation of the company.

The Attorney-General, continuing, asked if anyone would have supposed, after reading the accounts for 1926, that there had been brought into it to make up the balance such an item as the £550,000 in respect of E.P.D. He asked the jury to bear in mind what was stated in the Report of Directors, and what was said by Lord Kylsant in his speech to the shareholders. It had been stated that when Lord Kylsant had expressed the view that things were on the upward trend, a shareholder had said, "Hear, hear." But was it not realised that in that year the dividend had fallen to 4 per cent., and a dividend of 5 or 6 per cent. was the sort of thing that had been hoped for? The company was not in the position, with its guarantee to the Treasury hanging over its head, to pay any dividend at all. If the shareholders had known the position, would they not have taken the view—glad though they might have been to have received their dividend—that this might be the last year, or the last but one, when they would even see the colour of any money again? Then, in the year 1927, the last reserves were going; again, had the shareholders the slightest idea that the sum of £232,000 had been transferred from E.P.D. account? The newspapers had regarded the results of the year 1927 as being the year of the Royal Mail Company's recovery. The company was not responsible for what the newspapers stated, but, when Lord Kylsant was making his speech a fortnight later, what a chance he had had to correct any false impression. Could it be supposed that, the shareholders having been told in the previous year that it was justifiable to transfer £150,000 from reserves, they had any idea that double or treble that sum was being transferred from what he did not hesitate at the moment to call hidden reserves? It was not a question of whether Lord Kylsant thought or did not think that another cycle was coming. "I submit to you as a proposition of common sense," said the Attorney-General, "that if the situation has got into this sort of position—if the company is obviously in grave difficulties—it is really not for any chairman or any director to say to himself, 'Well, I am not going to tell my shareholders, because I think there is going to be a cycle and everything is going to get right again, and between 1928 and 1929 I am going to be put into a position to pay the debt I shall then owe to the Treasury.'" It seemed to him that wholly different considerations arose in the cases as between the two defendants. It was one thing to go through a process of what he might call stock-taking of your reserves to see if they were sufficient to meet contingencies which might arise. The attitude of a man who approached the subject from the point of view, "I am going to find enough to meet the deficiency; where can I find it?" was not the attitude of a man who was going to adjust taxation reserves. That was not adjusting them at all. Let the adjustment of taxation reserves be taken at its face value. Let them assume what the ordinary shareholder would assume that it meant.

So far as Mr. Morland was concerned, said the Attorney-General, he felt it was his duty to make it plain that he knew nothing of the things which were going on to which he (the Attorney-General) had alluded. When Mr. Morland came on the scene the account had been approved and passed by the directors. He did not know that £350,000 had been moved up to £550,000 because the Nelson bonus had not materialised. He did not know that Lord Kylsant had started the ball rolling by saying to Mr. Cason, "What reserves have we got to meet the deficiency?" Mr. Morland had said he selected those words, "Adjustment of taxation reserves," because he thought they would convey the definite and precise meaning which he said he wanted them to do to the ordinary man in the street. "As ordinary men and women in the street, gentlemen of the jury," said Sir William, "I submit that they would convey no such meaning at all. It has often been said that the great professors of Latin and Greek are the worst teachers, because they cannot realise the difficulties of their pupils. Perhaps you should take into consideration whether Mr. Morland was too much enwrapped in the mysteries of accountancy and of higher mathematics and never descended to the plane which the ordinary man and woman occupies."

The Attorney-General said he thought it was fair to say that Mr. Morland had no knowledge with regard to the subsidiaries. The jury had seen that the position of the subsidiaries made the whole situation far more serious than it would otherwise have been. Then there was this vitally important distinction between the cases as they affected the two defendants. When these words were used in the year 1925, again in 1926, and again in 1927, Mr. Morland in the ordinary course of events would not read the papers or concern himself about quotations. He would not read accounts of the meetings, or anything at all about such matters. Of course, he might not realise that those words had been misunderstood. But the members of the jury must ask themselves, weighing the whole matter up and bearing in mind that it was their duty to give Lord Kylsant the benefit of the doubt, if they could, supposing Lord Kylsant in the year 1925, when the words were first used, thought they were an adequate indication, did he still think so in 1926? And if he thought so in 1926, was it possible for them to remain of the opinion that he still believed it in 1927? So they got a very different set of circumstances by which to judge the two cases. But when he had pointed out to them all those relevant considerations they must bear in mind that they would not convict either of the defendants unless they were satisfied that not only was the document false, but that there was a deliberate intention to put forward a false document. He could not help regretting—and the jury might perhaps share his regret—that Mr. Morland with regard to the Royal Mail Steam Packet Company did not think it right and proper at some stage to make the same sort of statement he did with regard to the Royal Mail Meat Transport.

The Attorney-General said he dissented entirely from the point of view which he understood Mr. Morgan to put forward, that an auditor was not concerned with the form of the profit and loss account. He was concerned for this reason—unless he was satisfied that the profit and loss account and every other document fairly and truly put before the shareholders the state of the company's affairs he ought not to sign it. He was there to protect

the shareholders; he ought to put himself in the place of the ordinary shareholders and not concern himself exclusively with technicalities and phrases. To say that now did not alter the fact that, so far as Mr. Morland was concerned, in Counsel's submission he would be doing less than his duty if he failed to point out those facts which he thought might make a very real difference between his case and the case of his co-defendant, Lord Kylsant. For the reasons which he had already indicated he submitted that the jury must consider the two cases from rather different angles. He further submitted that, with regard to Lord Kylsant, if they thought his conduct was deplorable, or if they thought he was prepared to gamble with other people's money, or whatever hard things they might think about him, they would have no right to convict him either, unless they were satisfied that he put forward these documents knowing them to be false with the intention to deceive the shareholders.

"Having said that," proceeded the Attorney-General, "it is my duty to submit to you in this case that those documents were obviously false, that they obviously concealed from the shareholders the true position of the company, and that they were intended to conceal the true position of the company." It might well be true that Lord Kylsant hoped that better times would come, that the company would get round its difficulties and perhaps get an extension of its trading facilities without its difficulties being brought to light. But, in Counsel's submission, whilst hoping for things to get better and hoping for something to turn up, Lord Kylsant was keeping things back from the shareholders which made the documents he was putting forward false and untrue. That was the position of that part of the case.

The Judge would tell the jury the facts which they ought to take into consideration, and it was for the prosecution to discharge the onus of proof. If the jury were left in any doubt it was their duty to return a verdict of "Not guilty." They must remember, however, that if, on the the other hand, having regard to all these considerations they felt that there was only one verdict possible, to return that verdict.

The Attorney-General went on to say that he had to come to a simple matter, though perhaps, as far as Lord Kylsant was concerned, the jury would think it was at least as serious and perhaps more serious. He in his position must always remember that a man in Lord Kylsant's position, if his concern had gone broke, was liable to be shot at, particularly in the light of after events, and people with a knowledge of after events were only too likely to turn round and look for some criminality. He did not want the jury to do that. It was only fair that Lord Kylsant should not be judged in the light of the knowledge of to-day, but in the light of the knowledge which existed at that time. "Great as his position has been, I don't think any one of my colleagues who has ever held my office would differ from me in this. If we are going to insist on financial purity in the City of London, with regard to these prospectuses, we must not pursue merely the comparatively humble shareholder." They must be prepared to strike at a man in a big position if he had done anything which he ought not to have done. But because he was in a big position, and had been unfortunate in his concern, that was no reason why they should condemn him. It had been said on Lord Kylsant's behalf, were they going to punish him because he had made an error of judgment? It had been said that he thought things were in the trough of the waves, and were going to get better; were they going to punish him for that? Lord Kylsant was perfectly entitled to that view when he issued a prospectus to the public, the public were entitled to form their own judgment, and they were entitled to have such facts put before them that would enable each one of them to make up their minds as to whether the investment was a good one or a bad one. It was not enough for a man to say that he thought that everything was going to be all right, and that if they were going to punish him, it was because he had made a mistake. "Prophecy," said Sir William, "is not what you want in a prospectus. What you want are facts—facts from which investors can themselves draw conclusions as to what is going to happen in the future."

The Attorney-General referred to his cross-examination of Lord Kylsant and stated that at one point he had asked Lord Kylsant if he thought it was the duty of a person who put forward a prospectus to put forward all relevant facts so as to enable an investor to form his own judgment. To that question Lord Kylsant had answered, "Yes." At another stage of the cross-examination Lord Kylsant said the prospectus told what his concern had done in the past and it gave an idea of what it might do in the future. There they had it from Lord Kylsant that you had got to state facts to enable an investor to form his own judgment and that the relevance of the past was only in so far as it enabled you to form a judgment with regard to the future. If you took an average, said Counsel, you must be very careful to see that there was nothing in that average which vitiated or falsified the conclusion which you wished the investor to draw as to the future. The ten years' average dealt with in the prospectus began with the year 1918, and ended with the year 1927. Lord Kylsant had said that the situation which prevailed at a certain part of the later period was wholly different from that which prevailed immediately after the war. Sir John Simon, in dealing with the matter of average, had put the case of a cricketer who claimed an average of 50, and had contended that it was immaterial if the man obtained most of his runs in the early part of the season and had rather gone off in the later part. Of course not, that was a perfectly correct thing to do. The man stated his average. But let them consider the case of a cricketer who at the end of a season was so unfortunate as to get a shot-gun pellet in his right eye, and who at the beginning of the next season, in seeking again an engagement, said that his average for last year was 50 and made no mention of his partial blindness. It would be obvious to a nursery that such a man was dishonest. There had been a complete change in circumstances, Counsel submitted, which rendered that average untrue. And if they took a case like that before them where they were dealing with the situation from 1918 to 1920 which was wholly different from the situation as it existed in later years, did they think it was honest? Counsel for the defence had said, "Oh, but are you to regard these investors as babies?" The jury must realise that these prospectuses did not only go out to people in the City of London. They went out all over the country. He had no doubt that many a country parson and many a village schoolmaster got them. Did they think it was an honest thing to put forward a statement of this sort and then when it was criticised to get some distinguished Counsel to say, "You must not treat these investors as though they were all babies"? In his (the Attorney-General's) opinion that part of the case admitted—nay, it necessitated—an answer which was far easier to arrive at than in the other part of the case.

The object of the writing back of items which had been suggested during the hearing had been said to be to prevent any member of the investing public being misled. It had also been said that it was to give the investor the necessary information to enable him to form an opinion. The test was not whether there were £14,000,000 of assets; it was not whether the investor would ultimately get paid in full: the test was the answer to this simple question. Supposing the true facts as they were now known had been set out in the prospectus, was there any member of the jury who had a shadow of a doubt that there would have been no subscriptions whatever for an issue which was going to yield something which Counsel thought was less than 5 per cent.? He had put the question to Lord Kylsant as to what he thought would have happened if the figures had been set out in the prospectus as they were set out in a table which had been produced. Lord Kylsant had at first replied that he would not allow any incorrect figures to be set out in any statement with his name upon it. Again the question had been put, if these figures were set out in the prospectus as they were in the statement, was it not manifest that nobody would have invested?

Lord Kylsant had made reply that if the figures were set out as they had been proved to be in that Court, there would have been a good response to the issue. "You can judge of the truth or falsity of that answer without any further observations from me," remarked the Attorney-General. The jury knew what the results of the trading from the years 1921 to 1927 had been. They could imagine how the statement would have looked if Mr. Morland had set out year by year everything that had been done. If Mr. Morland had been asked he would have insisted upon doing that to enable, as he said, an investor to form his own judgment. Let them think how that would have looked and then ask themselves if there was a shadow of a doubt but that if those figures had been set out in that way there would have been no subscription, still less an over-subscription. "We cannot be too careful to insist on scrupulous honesty in the prospectuses which go forth. It is so very easy for a clever person to put forward a document with regard to which he can rightly say 'every sentence is true,' and yet the document as a whole is false." There was a question to be considered whether Lord Kylsant when he put forward this statement did so with a view to deceive those who might entrust money to the company. It was not a case of whether the jury thought the document was too tricky, too clever, or even dishonest. That did not entitle them to find a verdict of "Guilty." They had to find that this document taken as a whole was false, that it was intended to be false, that it was intended to deceive people who would entrust money to this company. Another point with regard to the prospectus was that they might think of all deplorable statements, the statement about adding to reserves was the worst. The attitude of mind of a man who could say with regard to a certain year that he had added to the reserves when he had taken from the unpublished reserve far more than he had added to the published reserve, was one which needed no comment.

"I want to say one thing more," said the Attorney-General, "upon what has been for me the most anxious, the most worrying case I have ever had since I have been at the Bar. With all my anxiety, to do everything I ought to do to arrest a certain laxity which I think I have perceived in this case—a laxity which does not redound to the credit of this country, nor in the long run as a service to the restoration of confidence among our people—the overriding consideration for me, as for my friends, is this, that there shall be no danger that any innocent man shall be convicted merely because you disapprove of his conduct or dislike his methods. If, on the other hand, you feel that this case is brought home, do not hesitate to do your duty because you have heard about anxious nights or warders and chains, or anything of that sort. You serve your country best by doing your simple, plain duty. In my submission, having addressed you on this case, I submit to you on this last matter—the question of the prospectus—there can be no reasonable doubt in your minds that it was as a whole a dishonest document, a false document, put forward with the intention to deceive investors, and it did deceive them." With regard to the other parts of the case as affecting Lord Kylsant, Sir William submitted that the jury ought equally to find that the accounts which he had dealt with were false, that they did not give to the shareholders information which the shareholders ought to have, but that on the other hand they conveyed a wholly untrue picture of the position of the company. The jury ought to find that the words to which he had alluded were put forward with the deliberate intention of preventing the shareholders knowing what the position was, in the hope, no doubt, that things would improve and become better.

With regard to Mr. Morland, he had thought it his duty to put forward certain facts which in his submission sharply differentiated Mr. Morland's case from that of Lord Kylsant. There was a certain phrase in question, and the jury had to consider whether that was a phrase simply used by an accountant, if perhaps too readily used, or as to whether they thought Mr. Morland intended to deceive. If so, in his case it would be their duty to return a verdict against him. "But it is right," said the Attorney-General, "in looking at the matter so far as he is concerned, that you should always remember that he had no motive whatever to do anything dishonest so far as his financial position was concerned, and therefore, I think, you will be slow to take a view hostile to him, merely because you think he used a phrase which he ought not to have used if he had determined, as he said he had, to bring this matter home and to put it before the ordinary shareholders."

"I have done, and you will have the benefit of an examination of the figures by my Lord. I leave this case in your hands knowing that under his direction and with his guidance you will play your parts as good citizens and unflinchingly do your duty."

NINTH DAY.

Mr. Justice Wright's Summing Up.

Summing-up the case to the jury, his Lordship said that the jury had for several days listened to the trial and the time would soon come when their voice would have to be heard in a decision. But at the moment there was his summing-up to be heard. As the jury knew, it was the duty of a Judge at the end of a criminal trial to sum up the case. It was the Judge's duty to tell them to the best of his knowledge and understanding what the law was which they must apply to the case. It was also the Judge's duty to tell the jury, or to analyse the evidence which had been given by way of reminding them, of putting things together as well as he could, and in that way assisting them to do what was their duty and their duty alone in arriving at a decision at the end of the case. While a Judge in summing-up would do as they might imagine his best to be accurate, he might well fall into error on a statement of fact, and he might err also, according to their judgment, in omitting things or in stating things which were not very material or in over-emphasis or under-emphasis. Whilst the jury took the law as regards the facts on the Judge's summing-up, it did not in any way bind them in their decision. The jury were the judges of the facts.

The jury had heard the evidence from beginning to end, and he need not say that they had given their greatest care and attention to a long and trying case. It was on the jury that the responsibility must rest. He had said that it was a trying case, but it was an important case because it had involved the ventilation in the City of London, in the Police Court, of many questions connected with the finance and accounts of companies. It was also a matter of the very highest public importance. Proceeding, the Judge said that he was bound to say that words had been heard in the course of the case, and quite apart from success or failure he thought that the prosecution had been, and would be, of very great service to the commercial community.

The position there was that the jury had to consider whether the sections of the criminal law which were enacted for the protection of shareholders had or had not been infringed. The Crown, in considering the question of the prosecution, had only to act according to their skill and judgment on what appeared to them to be a *prima facie* case, and it was their duty to present the facts as they understood them clearly to the jury, but the eventual result of the trial must of course depend on the decision of the jury when they had heard all the evidence. That being so, what was the position then? Before he dealt with the actual charges which the jury had to consider, and that was the essential part of the case, his Lordship said he wanted to convey a warning and a distinction, and to point out that the jury were not concerned or to be concerned with several other matters which had incidentally arisen in the course of this inquiry. What he meant was, the general law of the keeping of accounts, and the general duty of auditors and questions as to the true functions and contents of balance sheets and profit and loss accounts. Those were important questions of very great public interest, and no doubt everything which had happened in the case would be of

value to those whose duty it was to see that the law on those matters was observed, and if it was unsatisfactory or insufficient for the purposes for which it was intended, to take steps to have the matter improved.

A great deal had been said about the keeping of secret reserves, and how far that was permissible under the Companies Act or under the special charter of the Royal Mail Steam Packet Company, because the question which arose there would have to be decided under the special charter of that company. Now a great deal had been said about the commercial advantages which might flow from that practice, and they had heard a good deal as to what was often done in practice, and what might be reasonably and properly done, but questions might arise some day in order to find out or elucidate these very special matters. On one occasion, a Judge had said that the shareholders could not complain if the position of the finances of the company was better than the accounts disclosed, and that had been quoted from time to time as justification for keeping reserves secret. But there might be very great evil if those who had control and management of companies for the benefit of the shareholders had large sums left at their disposition. It was a practice which was being followed, no doubt, by many concerns of the highest standing. On the other hand, it might be the subject of almost intolerable abuse. It might be a system to cover up big irregularities. It was said to be a matter between the company and the shareholders, but if the shareholders did not know what the position was, how could they form any view about it at all? Taking the case, apart from the question of anything that was called reserve or not, they had a large sum of money, or a series of large sums of money, the nature of which had remained a secret from the shareholders, and the use of which had also remained a secret if they excluded certain things which appeared in the last three balance sheets with which they were concerned. They would know, and there was no dispute about it, that there were balance sheets and profit and loss accounts published for a period of seven years which did not disclose one way or the other whether the company was making any profit or not. During those seven years there was expended out of certain items a sum of no less than five million pounds, not out of current earnings at all, but out of those items which in the main arose from the war, and during all that period the shareholders were told nothing and they drew their dividends presumably in the simple faith that all was well with the condition of the company. It might be said, and very well said, that the shareholders got their dividends, and that times might have changed as well as conditions, but on the other hand, surely if the shareholders had been told—he did not say who was responsible for the moment—that this company had no earnings, and the company could not go on indefinitely unless it did have earnings, surely they might have taken steps, as they could have done, and as had been done in other cases when shareholders became aware of the position of the company, for the reconstruction and rearrangement of the company's affairs, the cutting down of expenditure, and all those things which had to be done when a company was not paying its way. The sooner that was done the better. It was never brought to the knowledge of the shareholders what the position was, and it might seem incredible that that position should go on all those years, but eventually at a period outside the period with which they were concerned, something had to be done. Now it was a little astounding, and one could not help wondering whether those who managed big companies did not forget sometimes that the body of directors of the company were the agents of the shareholders, that they owed them full information subject to proper commercial and reasonable necessities, and it was the shareholders' interests they had to study. They were not to regard shareholders as sheep who might look up if they were not fed. A joint stock company was a creation of law. It had the enormous advantage of limited liability, and it was intended to secure that those who enjoyed those privileges of limited liability and who controlled and managed joint stock companies should be subject to some conditions as to publishing their accounts at least to the shareholders.

His Lordship said that recently the law had been amended and now provided for the sending of a balance sheet and profit and loss account to the shareholders every year, and there were penalties imposed upon directors who did not do that. The balance sheet must contain a summary of the liabilities and assets, together with such particulars as were necessary to disclose the general nature of the liabilities and assets of the company, and to distinguish between the values of the fixed assets and floating assets, and how the value of the fixed assets had been arrived at. It further provided that there should be a report by the directors in relation to the state of the company's affairs and the amount, if any, that was to be paid in dividends and the amounts which they proposed to carry to the reserve fund or any other reserve. It might be said that, in a matter like keeping reserves, the shareholders might agree to a reserve being accumulated, the exact amount of which was not specified in the balance sheet. That was a question which might have consideration at some future time. The terms of the section of the new Act could not possibly justify the omission of any amount of secret reserves from a balance sheet altogether. It was the intention of this section that the accounts of companies in the future should be published with greater particularity and information for the shareholders.

Then there was the question of the auditor. The law required the appointment of an auditor who was the servant of the company, and his duty was to report on the accounts which the directors were going to present to the shareholders. It did not require skill and vigilance beyond their power, but it did require from the auditor a careful examination and for him to give a certificate saying that the accounts had been properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, according to the best of his knowledge and the information given to him. If the accounts from which the dividends were being paid or the expenses were being met were being fed by undisclosed reserves, it seemed very difficult to see how an auditor could discharge his duty of giving a true and accurate view of the correct state of the company's affairs without drawing attention to those facts, which were vitally important. No doubt an auditor in his delicate duties had to use a certain amount of discretion, but he had to remember that he was under a statutory duty and that he might come under the penalties of the law if he failed in that duty in any specific way. He would not trouble the jury or enlarge on those points at that moment.

In the present case, the jury would remember that they were not dealing with a company under the Companies Acts, but with a company which was formed as a corporation and which had the privilege of limited liability, and that corporation was governed by the terms of the charter, because it was the Crown who granted the charter. There were very few chartered companies. It was a practice which was availed of in the earlier days before the Companies Act had been invented or developed. In those days they were only created by an Act of Parliament or the Crown. The R.M.S.P. Company was a very old one, having been formed in September, 1839, and, as the jury knew, there were certain conditions which governed the keeping of accounts, and prior to the annual meeting a report had to be prepared and the assets and debts of the corporation set out for the purposes of the meeting. The directors also had to give such other information to put before the shareholders as might seem necessary to be given and the accounts had to be signed by the auditor of the corporation. That was an obligation on the Court of Directors to prepare and lay before the meeting in each year an account of the debts and assets of the corporation and an account of the profits made every year. In 1904 it was decided to alter certain conditions because in the old days the auditor was not a professional auditor but perhaps a member of the company. Then professional auditors were appointed, but that did not alter the provision requiring the directors to give an account of the

profits which had been earned. The law provided that the auditor had to sign a certificate stating whether his requirements had been complied with and to make a report on the accounts and to state in that report whether in his opinion the balance sheet was properly drawn up.

"The profit and loss account," continued Mr. Justice Wright, "contains information for the benefit of the shareholders. The auditor is not concerned with the question of policy, as to whether a dividend is properly or improperly declared, but if there is something in the accounts to which the attention of the shareholders should be drawn, the question at issue is whether that information is correctly given."

Mr. Justice Wright then referred to the various charters of the Royal Mail Steam Packet Company, and remarked, "So far as I know, in those charters there is no provision for the maintenance of any secret reserve. There may be, but it has not been pointed out to me, and I have been unable to discover it. The question to be decided here is not whether the two defendants or either of them has committed any breach of his duty to the company, either as chairman or as auditor. If there has been any breach or negligence or anything for which the directors or auditor may be liable to the company, that is a matter entirely beyond your purview or consideration. You are not here dealing with questions of civil liability, for civil liability can be settled by action for damages. But when a matter comes before this Court, it comes as a matter of criminal liability; it comes before this Court because something has been done, some breach of the law which goes beyond the purview of civil liability, which may not be answered by damages, but which amounts to a crime against the State and for which there is provided for the party convicted an appropriate sentence by the Court. There is just one other observation that I should like to put before you, before dealing with the indictment. It is this: that it is the universal rule of English criminal justice that every man who appears in the dock on a criminal charge is in the eyes of the law innocent until he is proved to be guilty, and the jury cannot convict a man of any criminal charge unless they are satisfied beyond all reasonable doubt that he is guilty of the offence charged against him. One sometimes hears it said in a criminal case, I have heard it myself said, that questions of public policy, questions of public morality, questions it may be of financial purity are involved, and things of that sort are said to the jury. I don't think anything of that kind has been said in this case. Although questions of that sort may well be considered before the case for the Crown is launched, they are not questions with which you have to deal in arriving at your decision. You have to decide on the facts and on the evidence in this special case, and therefore those considerations to which I have referred are not your considerations."

Mr. Justice Wright then referred to the indictment against the accused. Lord Kylsant, he said, was charged first with circulating a false statement with intent to deceive shareholders. If the jury found that there was a false statement, but that it was made with intent to deceive someone else, it would be outside the scope of the "intent" mentioned in the Act. The relevant intent in this case was with regard to shareholders. The charge went on to say that on May 11th, 1927, Lord Kylsant, being a director of a certain public company, namely, the Royal Mail Steam Packet Company, did make, circulate and publish or concur in the making and circulating and publishing, of a certain statement which he knew to be false in a material particular. That charge, of course, was made in connection with the annual report. That report was a document which had been before the jury time after time, and referred to the profit and loss account and balance sheet for the year 1926. Then, continued his Lordship, Mr. Morland was charged with aiding, counselling, procuring and so forth, Lord Kylsant to commit that alleged offence. What he had to say in regard to the case of Mr. Morland he would defer for the moment. Then there was a similar count relating to the report of the directors for 1927, which was in identical terms. The third count was against Lord Kylsant with regard to the prospectus. That was a written statement inviting the public to subscribe to an issue of £2,000,000 debenture stock in the Royal Mail Steam Packet Company, which he knew to be false in a material particular in that he concealed the true position of the company, with intent to deceive such persons as might entrust their money to the said company. These offences all came within sect. 84 of the Larceny Act, 1861. The learned Judge then went on to construe the Act. He said that this Act—as Acts of Parliament went—should be reasonably clear and not require any particular exposition except that he wished to emphasise certain aspects of it and to indicate what construction he had arrived at as to the meaning of certain words. "Any written statement of account false in any material particular." Now, what exactly did that mean? The conclusion he had arrived at was this, that the definition was not limited to a case where you could point to written statements or accounts and say, "Here are certain figures and words which are false." He thought that was too narrow a view of the words referring to "material particular." The Act must be strictly construed, but reasonably so, but in his (the Judge's) view, to construe it in that way would be to shut out a type of fraud in connection with any document or accounts which might be of the utmost importance, and that was the type of fraud where they had a document that was fraudulent not in the sense of what it stated, but in the sense of what it concealed or omitted. It might be said that you could not place your fingers upon any actual statement as being actually false although the statement itself might mean more than it appeared to—he referred to such a statement of account which might not contain any specific words or specific figures that were actually false, but which document might be false in the way it was drawn up. You might have such a document with regard to every word or figure in which you could say "there is nothing false about that," but which on the whole might be false not because of what it stated, but because of what it did not state, because of what it implied. Of course, that was a type of falsity which was in question in this case, and was far more difficult to establish than a case where one could point to a specific false figure or word; but where such falsity existed it had to be shown affirmatively that there was a deliberate intent to create a false impression. A man might be able to show that if even such a false statement were made, and that he knew it was false, yet he did not intend to deceive anybody; that he made such a false statement or inaccurate statement thinking it was substantially true. But where they had a case where a written statement was alleged to be false in the sense that it was concealing the true facts, what they had got to decide was whether it was a concocted—a deliberately concocted—instrument, an instrument of a definite scheme to defraud or deceive, as the case might be, and therefore in order to prove a case of fraud of this latter type, namely, a case of concealment, the intent and the purpose must be established at the outset.

"But to construe sect. 84 so as to exclude from its ambit that type of fraud in a written statement or account would, in my judgment, be to limit unduly the scope of the enactment and exclude from it some of the most important types of false documents which in this class of case may have to be dealt with. The language must be considered reasonably, according to its natural meaning, in my judgment, having regard to the whole of the section and its purpose and character. I think the construction I have given to it is the true construction. I have to decide this myself, you see, and you must take that view of the section from me. If I am wrong, and the necessity arises hereafter, there are other Courts who can deal with the matter. The section requires three things: a false written document, knowledge of the falsity—that means the recognition, the understanding, the realisation of the falsity by the person who publishes it and puts it forward—and thirdly, the intent to deceive. The intent to deceive is quite a separate thing. You may have a false document, and you may have published it knowingly, and yet there may not be circumstances which justify

the finding that there was an intent to deceive. In fact, in one of the sections under the new Act—I think it was in one of the earlier Companies Acts as well—you have a definition of the offence of misdemeanour, of publishing a false document, knowing it to be false, but with no reference to any intent to deceive. It is left out, just as in some other criminal offences; the intention is not a necessary ingredient.

"Here the intention to deceive is a necessary ingredient as regards the accounts, to deceive shareholders, and as regards the prospectus to deceive possible investors. The intent must be established, because it may be that if a man publishes a false statement knowingly, it may be that *prima facie* he has an intent to deceive. But that is only *prima facie*. I am not considering any question of the burden of proof here, but it may always be shown that a jury are always entitled to find, although there was a false statement published knowingly, the intent was absent, just as you may think an accused man, though he did the act, might show that the relevant intent was absent. Then, of course, he cannot be found guilty. If he is found guilty at all, it is on a somewhat minor alternative offence.

"Just before I leave these general considerations, I ought to remind you that you are dealing with questions of criminal intent. Sir John Simon read a passage from a famous summing-up in one of the early cases under this section. Although I think I have said in effect what is stated there, it is most admirably put, and I should like to read it to you. The Chief Justice in those days said:—

> "'In a case of this kind, we are, as it were, upon the very confines which separate the criminal and civil law, and we must take care that we do not overstep the boundary line. It is one thing that a man may make himself liable to an action, or liable to have a contract which he seeks to enforce, held to be bad, because he has stated something which went beyond the exact line of truth, or has concealed some material fact which ought to have been made known to the other contracting party. More than that is necessary to support that charge. A man may honestly misrepresent, he may state as something which he believes to be true that which turns out to be untrue. If he has given a warranty, or has entered into a civil contract founded upon the assumption of the fact in question, he may be liable in a civil action to be defeated, but that would not be sufficient for the present purpose. Here you must be satisfied that that which is alleged to have been misrepresented was known to the defendants to have been false, and that acting upon that knowledge and with the deliberate intention to deceive and defraud, they did that which is alleged to have constituted the criminal offence for which they are now on trial.'

"Probably I have only been reading what you have heard during the last ten days, but it is my duty to repeat it, and repeat it with all the solemnity I am capable of in the course of this summing-up."

Mr. Justice Wright, proceeding, said he could now turn to the matters of facts in the case which the jury would have to consider. The charter under which the Royal Mail Steam Packet Company was constituted had been read, and it would be remembered that in 1911 it was a very much smaller company than it was in the period with which they were particularly concerned. In 1911 the company had ordinary and preference shares amounting to £1,700,000, debentures of £2,250,000, and insurance fund which was then only £300,000, and reserve fund which was only £420,000. In 1921 its capital was, ordinary and preference shares £6,800,000, debentures £4,500,000, reserves £1,600,000, and insurance fund £1,022,288. It appeared that the company, from certain aspects of its business, followed a conservative and indeed an old-fashioned routine, although there could be nothing wrong in that. Automatically the insurance fund increased, first by a rate of 3 per cent. and later by a rate of 2 per cent. The insurance fund was essentially a surplus fund. It was unnecessary to trouble the jury with the details, which were very clearly set out in the document. That fund was in fact an extra reserve. It went on increasing during the period from 1921 to 1927 automatically in the routine of the office, and was never interfered with. During the seven years in question it increased by £300,000. The reserve fund remained at £1,600,000 from 1921 onwards, except that in 1926 it was reduced by £150,000. There was a rate of depreciation which was followed year by year of 5 per cent. It was a liberal depreciation, because 4 per cent. was sufficient.

As a matter of history, it might be stated that in 1929, as the jury had heard, a question arose about a guarantee of £5,000,000. That amount had been guaranteed by the Government under the Trade Facilities Act, and he thought fell due, according to its original tenure, in 1929. Lord Kylsant applied for an extension, and that led to an investigation being undertaken of the company's affairs. Sir William McLintock conducted that investigation and presented his report in March, 1930. In the course of that investigation Sir William McLintock was concerned, and was indeed only concerned with the ascertainment of what were the current earnings of the company during the relevant period, because the Government, before prolonging the guarantee, wanted to know what the company was doing, and what its current earnings were. Sir William McLintock accordingly, with that object in mind, undertook the inquiry, and in the course of his report he referred to some very large sums of money which had been applied in the affairs of the company from 1921 onwards. Sir William McLintock gave evidence, and was challenged regarding the use of the word "Reserves." The witness not unnaturally retorted that he had only taken it because it was the word used by the company and its officials, and indeed everybody seemed to have called them reserves until some doubt arose in the course of the present inquiry. It might be that there was a reason for calling them reserves. If they were reserves they were undistributed income, and if they were undistributed income they could be used for paying dividends. He (his Lordship) knew nothing about that.

"All I want to point out is that I am referring to Sir William McLintock, who conducted the specific inquiry, as everyone agrees, with the most precise accuracy, and there is only one figure criticised, and that is about depreciation in 1926. He pursued his investigation, as you expect from a man of his eminence in a distinguished profession, with complete accuracy and made his report. I must say I thought he gave his evidence with absolute fairness and with studied accuracy and moderation. I don't know why I should say moderation, because he had no reason for anything else. He was not interested in the matter at all. It was the material which he obtained which, as I understand, drew the attention of the authorities to what had been happening in this company.

"The period in question which you have to consider is from 1921 to 1927, or more specifically you have to consider the two years 1926 and 1927, when you are considering the accounts, because it is to those years that some of the counts of the indictment refer. Now, I have already said that you are not concerned with any questions of civil duty as between the company and the two defendants, or either of them. May I remind you what is the case actually put forward by the Crown. For this purpose they do not lay any stress on the precise rules of law as to the completeness of the company's accounts, or the precise duties of accountants. What they say is: 'Granted, assume that, as the practice is said to be general, directors may be justified in putting money into undisclosed or secret reserves. Assume that they may use these secret reserves without telling the shareholders over some period of time, and do that properly. Assume all that, yet a time comes when, if that is done to a large extent with large sums of money, or so often over a long period of time, you have then the circumstance so vitally affecting the life of the company, and vitally affecting the interests of the shareholders, that any deliberate concealment of the circumstances is a breach of duty on the part of the directors or auditors if done fraudulently, with intent to deceive.' I do not gather now that there is any real difference, any real question as to the general accuracy

of the view, that a very heavy or a very long protracted utilisation of secret reserves, in order to keep the company going, is a serious matter which ought to be disclosed in any review of the company's position, quite apart from anything I have said about the general law on it. You have had the benefit of hearing that very distinguished accountant, Lord Plender. The question was put by Sir Patrick Hastings, and Lord Plender was a little guarded in what he said."

His Lordship then pointed out that Sir Patrick Hastings asked Lord Plender whether in a case where there was no longer a requirement for excess profits duty, money might be introduced into the trading and profit and loss account, without any mention being made that the reserves had been called upon. Lord Plender's reply was, "There are such cases." Sir Patrick Hastings then asked, "You mean that has been done?" and Lord Plender answered, "Yes, it has been done." The Judge said that, so far as he could see, Lord Plender expressed no view about the matter. He said that it was done by firms of the highest repute. Lord Plender was also asked whether any exception could be taken, and he said, "As a principle no exception could be taken." That was a guarded answer. Lord Plender was also asked whether there might not come a time when, if the reserves were to be used again, some indication must be given to the shareholders that the profit and loss account was augmented by transfers from excess profits duty or other reserves. The answer was, "Yes." Then there was a question as to what phrase was the proper one to use. There was a question which might be familiar to the jury, but was not suggested as being familiar to anybody but accountants. His Lordship did not know how that might be. There was the question as to whether the addition of those words in the 1926 balance sheet, "Adjustment of taxation reserves," was, in all the circumstances of the case, a proper method of illuminating the minds of the shareholders as to what was actually happening. That was a question which the jury would have to consider, and one they would have to give their decision upon, one way or the other. Was that phrase, "Adjustment of taxation reserves," sufficient? Was it a proper intimation to the shareholders in the year 1926 of what had been going on in the company's affairs, in order to produce year by year not only debenture interest and the interest on discounts and other things, but the preference dividend and the ordinary dividend? "I am going to say a word about the facts in a moment. At the present time I am reminding you, although I am sure you have it in your minds, of what appears to me to be the first question you have to consider. Granting all this, was it false and misleading in all the circumstances to put forward to all the shareholders in the balance sheet merely these words 'Adjustment of taxation reserves' as a warning that these enormous sums were being drawn from these funds, the nature of which I must consider a little later? Then, as to these words, Lord Plender gave his definition. He said: 'The difference between a sum or sums reserved or set aside to meet maturing obligations, whose precise ascertainment is not known at the time such provisions are being made, and the amount of the actual liability when it is ascertained and settled.'"

His Lordship pointed out that Lord Kylsant was questioned on the matter, while evidence was also given by Mr. Hill. The latter agreed that transfers from reserve fund were sometimes paid into a profit and loss account without any indication being made, but there came a stage when some indication must be given. Mr. Hill was also asked: "Does there finally come a stage when there must be not merely an indication, but perfectly precise phraseology about which no one can make a mistake." The reply was: "I should think so; it depends upon the circumstances, one cannot generalise exactly." His Lordship added that Mr. Hill, the President of the Institute of Chartered Accountants, said that there does come a stage when some indication must be given, and he thought there came a stage when there should be perfectly precise phraseology which nobody could mistake. Mr. Hill did not want to generalise; that was very wise. He (the Judge) desired to read a few passages of the evidence given by Lord Kylsant, but if he omitted anything which was material, he would welcome any interventions from Counsel.

Sir Patrick Hastings said he desired to call attention to one answer given by Mr. Hill. That gentleman said that the phrase used was the proper one.

The Judge: He says "I think it was quite suitable." His Lordship then read the answers to questions by Lord Kylsant. One was "The extended and continuous utilisation of large sums drawn from secret reserves without any indication at length becomes misleading?" Lord Kylsant's reply was: "It could, under certain circumstances." Lord Kylsant also agreed that there came a time when some indication should be given, although he pointed out that if anything was carried to its extreme, one could get a wrong impression. Lord Kylsant was asked: "Suppose that time comes, and it has come, and the indication is necessary, the indication must be sufficient, must it not, to turn something which admittedly without it would be untrue, and inaccurate, into something which is true and accurate?" Lord Kylsant's reply was: "I feel that is a question which a Chartered Accountant would answer better than myself." "With great respect," observed the Judge, "it seems to me a question that a chairman of a company ought to answer."

His Lordship read further answers given by Lord Kylsant under cross-examination. Lord Kylsant was asked whether he attached any importance to the words: "Adjustment of taxation reserves," and his answer was, "I do not attach much importance to them." Lord Kylsant, however, would not go so far as to say that the ordinary man in the street would attach little or no importance to the words. So far as he had been able to follow the evidence, continued Mr. Justice Wright, there was no doubt that in the years 1921 to 1927, the Royal Mail Steam Packet Company was not earning any profit. The company was a ship-owning company, and a holding company, and profits came to it in two ways: in the form of balance of earnings over expenses in running its own ships, or profits from the dividends from the various concerns in which it had shares. In the cases of six subsidiary companies it held all the shares. In as many as seven subsidiary companies it held a controlling interest, and in some of the others a certain number of shares, and so far as they paid dividends it derived part of its income from them. Referring to the creation of the secret reserves, his Lordship said it was pretty well known what the ultimate liability would be, though, in fact, the ultimate liability was never definitely ascertained until May, 1927. In 1921, in the books of the company, there was a provision made for the excess profits duty of £2,260,000, and of that there was paid over to the Revenue £1,148,155, and they kept in the books a sum of £1,100,000.

There was a further complication before the matter could be settled, and that was that the Government allowed in respect of the War period large sums to shipping companies, such as the Royal Mail, under two headings, one for obsolescence, and the other for deferred repairs. Those matters were settled in 1926, at a total of £1,428,705. Then, when the excess profits duty was finally settled, it was at a figure of £1,769,122. Therefore, when those two sums were set off against one another, there was a balance remaining of £340,000. His Lordship proposed to ignore the constructive settlement in 1926, when no cash passed. It was ignored by Mr. Mathews when he made up his accounts. Therefore, what they had to deal with for the purpose was, first of all the balance of the money which the company never paid over to the Government, and which they felt entitled to use, and did use—in 1921 they transferred a sum of £300,000 by writing it off investments and in 1922 a sum of £100,000 was transferred to profit and loss. In addition to that the company received from the Government, from time to time, various payments until the Government had repaid in 1927 the total amount which it has received in excess of £340,000.

His Lordship detailed the payments received from the Government, pointing out that in 1923 the company had £250,000 so paid, and they transferred £100,000 to profit and loss account. In 1924 £390,000 was received, and £330,000 was transferred to the profit and loss account. That left a substantial balance, which appeared in the accounts to the credit of the fund. Then, in 1925, the company received nothing, but paid over £300,000, because certain claims were actually settled, or were in process of being settled. In 1926 the company received £270,000 from the Government and the account being then considerably in credit £550,000 was transferred to the profit and loss account. In 1927 the fund was finally closed up. At that final closing, there stood at the credit of the fund a sum of £232,788. In all those years there was available on that account £1,912,788. No part of that money was money earned during the period in question. It represented in one sense, although not perhaps technically, moneys which had been appropriated during the War period, although it might be his Lordship was a little in error as regarded the year 1921.

After referring to the exhibits in the case, the Judge said that he found that in 1921 there was paid over to the Treasury in respect of excess profits duty a sum of £125,000. There had been a great debate as to whether this was to be regarded as reserve or not, and that was a matter on which Sir William McLintock was severely taken to account, but for the purposes of this case he, Mr. Justice Wright, did not think it mattered what they called it. The sums were not, in fact, current earnings. As Sir William told the Court, "All I was looking after was what were the current earnings." It might be, of course, continued his Lordship, that they were not available for use, except at the time they were actually used. Mr. Mathews stated that he kept the books, and he kept the funds, and knew from time to time how much he could release, and he intimated that to Mr. Cason, and Mr. Cason conveyed the information to Lord Kylsant, but they were, as the jury could see, certainly not the current earnings, as they were no criterion of the earning capacity of the company at all for the period in question. It was a fact, whether these were called reserve funds or not, they would have to consider whether the essence of the matter was whether they thought the shareholders ought to be told that the company was being kept going by means other than current earnings. Mr. Justice Wright then dealt with a large sum of money, £1,120,452, brought into the accounts in 1921 from three of the subsidiary companies, not any of the hundred per cent. subsidiary companies. That was brought into the profit and loss account as profit for the year. It might be said that in one sense it was a profit of the year, although it represented earnings on the part of the subsidiaries for some of the abnormal years preceding. There was a payment out to the revenue of £125,000. There was a balance on the voyage accounts for the year of £825,890, but against that there was a set-off for general repairs, maintenance, insurance fund, depreciation of the fleet, which was on a hberal scale, depreciation of premises, general administration and the special debit of £125,000. In 1922, again, they had certain special debits which it was said ought not to go in where they did, and so reduce the deficit to £570,000. Again the result was the same, but after bringing in £809,871 and the interest on investments and deducting running expenses, including depreciation, they would have, as appears here, a total surplus obtained by using £100,000 excess profits duty, £45,000 of war contingencies, profits on the sale of steamers and depreciation funds.

He did not think it was necessary to trouble the jury with the figures relating to the years 1923, 1924 and 1925. In 1926 they got a position which, according to a table, showed a surplus on the whole position of £628,535. That surplus was only obtained by bringing in excess profits duty, £550,000; income tax reserves, £175,000; profit on the Nelson Line and general reserve fund £350,000. That was the first of the two years with which the jury were concerned, and in 1927 they had a very similar position subject only to this, that the excess profits duty brought in was finally exhausted in that year. There was income tax reserve brought in; profit on steamers; corporation profits tax and other sums, making a total of £540,386. In that year there was also brought into the accounts the bonuses of £300,000, obtained from the two Nelson companies under circumstances which would be within the recollection of the jury. The Nelson companies had been prosperous. They had that money available and they paid it over in the form of a bonus which they declared in that year, but whether the company benefitted by that payment of money except as a matter of book-keeping—they had received a cheque and then parted with the same amount by another cheque—was not clear. The bonus was declared, and the cheques for the £300,000 were paid. There was a further transaction under which the Royal Mail Steam Packet Company sold to the Nelson Steam Navigation Company the shares which it held in H. & W. Nelson, The parent company held all the shares, and purchased from the Nelson Steam Navigation Company 1,000,000 ordinary shares, of which half were fully paid up. His Lordship said he did not think that part of the case concerned him very much. He thought it was clear that £300,000 was paid over by cheque, and very shortly afterwards there came a credit into the 1927 accounts. Money was paid over to one of the Nelson companies in completion of the transfer which had been referred to. As to the subsidiary companies, it would be remembered that the Nelson Company seemed to have been rather prosperous. The MacAndrews and the McIver companies were less prosperous, and indeed paid no dividends in 1926 and 1927. The two big companies, the Pacific Steam Navigation Company and the Royal Mail Meat Transport Company, had been dealt with very shortly by Sir William McLintock. They had no evidence regarding the position of some of the other companies, such as Elder, Dempster & Co. With regard to the Pacific Steam Navigation Company, Sir William McLintock had stated that in 1926 there was a profit of £60,000 before depreciation. The actual trading loss for the year, which his Lordship hardly understood, was £83,755, after charging depreciation. The year 1927 was much the same. What was said, and it was rather a point which might not be very material for consideration in the case, was that no doubt the Pacific Steam Navigation Company was paying its dividend, not on its earnings, but on special credits. It rightly arose from and appertained to the War period. It was not necessary to discuss that in any detail. It was merely a subsidiary matter.

The jury were concerned particularly with the years 1926 and 1927. It would be remembered that the balance sheet was duly signed, year by year, by Lord Kylsant as chairman, and there had been some evidence given illustrating the manner in which the policy of paying dividends and dealing with the funds of the company was considered between that defendant and Mr. Cason. There was a document produced which referred to the two years. It was dealt with by Mr. Cason, who seemed to have been an extraordinarily careful and conscientious official. He was one of those officials on whom the success, or even the existence, of that big concern depended. He had a long record of service with the company, and was the chief accountant for a good many years. Mr. Cason produced the document in question, which he stated he laid before Lord Kylsant. The question was, how funds could be provided, as the Judge understood it? It was a question of how funds could be found to pay a dividend on the ordinary shares—4 per cent.—in view of the actual financial position of the company. The document was prepared and discussed. It showed the debenture interest, the preference dividend, the insurance account of 3 per cent., and interest and discount, the total amount wanted being £1,476,500. The document also showed voyage accounts, less expenses of £265,000. The problem being discussed was whether they could get the money for the purpose required. It was suggested that they could call upon the unpublished reserves.

"That is the discussion which is relied upon by the Crown as showing that Lord Kylsant was completely familiar with what was happening, and that he was considering how he could provide the necessary funds in order to pay the various expenses and provide the ordinary dividend. The balance sheet of that year, as you will remember, was eventually published, and it showed sundry balances and accounts not closed and differences owing by the company, including sums owing to bankers, of £2,842,440. It is a little puzzling to the ordinary person because there you have put together not only the debts owing by the company, but you have these credits which are constantly being called reserves, the exact nature of which you know, so you have lumped together in one sum moneys held by the company and debts owing by the company. Anyone reading this balance sheet, even if he understood accounts, would be unable to say how much was reserve and how much consisted of debts. That was true of the various balance sheets, and is not a point which is specifically complained of, though it has to be taken into consideration when you are determining whether this balance sheet and profit and loss account is on the whole misleading and false or not. When you look at the profit and loss account, bearing in mind exactly the position of the company, you find 'balance from 1925 less dividend paid in June; balance for the year, including dividends on shares in allied and other companies; adjustment of taxation reserves, less depreciation, £439,212.' There are various small items, transfer from reserve fund £150,000, and then you get the total of £773,492. That is expended in paying debenture interest, discount, and dividends on the preference stock, leaving a surplus in favour of the company, out of which it is proposed to pay 4 per cent. to the ordinary shareholders £200,000, and to carry forward £66,000. There you have the balance sheet which requires consideration. You will remember that up to 1923 these balance sheets did contain the words 'profit for the year,' and then it was considered better to change it to 'balance for the year.' Apparently it was realised that truly there was no profit if you merely looked at ordinary current outgoings and incomings. Looking at this document, in view of all the circumstances, you have to decide whether or not, in your opinion, it is a false document. I am not going to repeat what I have already reminded you of, namely, the circumstance that it is agreed that the time had come in 1926 when the state of the company was such that the company ought to have been informed, either by the auditor or by the chairman, that the concern was not paying its way, apart from its special credits. For instance, as you will see, £550,000 was taken from excess profits duty, and that was necessary to pay interest on the debentures and interest and discount, to the total of £273,000. There was a further amount of dividend on the preference stock of £233,000, and then dividend, interim and final, amounting to £350,000. Well, now, it is perfectly true that it shows the transfer from the reserve fund, which would seem, perhaps, to indicate that it was the only substantial use which was being made of the reserves, as it was indeed the only use made of the published reserves. It is perfectly true that you have these words, "Adjustment of taxation reserves." That is to say, the word 'Reserves' occurs twice over on this page of the balance sheet. That would be some sort of indication to anyone who understood the use of this language, that to some extent reserves other than published reserves were being drawn upon. On the other hand, it is pointed out that the amount drawn from the taxation reserve, which figures under the word 'Adjustment,' is a very heavy amount indeed (£550,000), and that, in view of all the circumstances, is said to make it a misleading statement; that in view of the large amount drawn from the reserves in proportion to all the other figures, that ought to have been clearly and specifically indicated, so that the true position of the company could have been disclosed to the shareholders. It is said, and it is for you to consider, that this is nothing other than false in a material respect, because it conceals the true position of the company in that year from the shareholders who were entitled to be told, and to whom the report was addressed. In 1927 there was a similar balance sheet and arrangements were being made to provide enough money to pay the debenture interest and a dividend of 5 per cent. This balance sheet was in its terms the same as that for the previous year. Under the circumstances it was again said that that was a false and misleading document. That is, of course, a matter you have to consider." Continuing, his Lordship said he did not know whether there was any other material point that he could usefully refer to. The most vital and serious issue was, had the defendants issued a false and misleading document? Was it published knowingly and with intent to deceive? That was a question of fact for the jury alone, which required the most careful consideration, and it was a question of fact as to which he need not remind them again, that the defendants were entitled to the benefit of the doubt.

Mr. Justice Wright, continuing his summing-up, reminded the jury of the fact that there was, as would be seen from the balance sheet of 1911, a rather stereotyped or traditional form of balance sheet published by the Royal Mail Company, and in later years the same form of balance sheet was continued, with some variations. However, though that was to be borne in mind, there was another matter which the jury might give attention to; it was that, although the chairman had obviously taken an active part, not perhaps in the actual preparation of the balance sheet, but in the determination of the manner in which the accounts of the company should be handled, and had actually signed the balance sheet and, therefore, made himself responsible for it, he had associated with him as colleagues a Board of Directors. As to the position of the directors, it might well be that if they were honourable men and were cognisant of the circumstances, that was a matter to be taken into account in considering the position of Lord Kylsant. But the directors were not before the Court in any sense as parties or as witnesses, and it was an elementary principle of justice that no opinion, certainly no adverse opinion, should be formed against any person who was not actually before the Court and in a position to state his case. As to what their position was, the jury might or might not have an opinion, but whatever it was, it was not an opinion which could be based on evidence. The only evidence as to the position of the directors and their actual cognisance of these matters relative to the balance sheet, so far as he remembered, was, on the one hand, the evidence of Mr. Cason, to the effect that he had never heard them discussed while he was present—of course he could not speak as to what occurred while he was not present, and apparently he was present when the accounts were before the Board—and, on the other hand, there was the evidence of Lord Kylsant that the matters were discussed with the other directors. In these proceedings the sole question was as to Lord Kylsant himself, and the jury had to consider the position of Lord Kylsant as having signed the balance sheet, quite apart from what anyone else might or might not have known. He being the only person, apart from the accountant, before the Court, he must be responsible for his acts, whether they were good or evil. As to the balance sheet itself, of course it was obvious to all that if a balance sheet was misleading, if it became known to the world that the balance sheets of English companies could not be relied on, that was a very serious matter for the financial affairs and the commercial affairs of this country. But again, as he had already pointed out, these generalisations were not of value to the jury in determining the specific questions, namely, whether there was a misleading balance sheet, and, if it was misleading, was it misleading to the knowledge and realisation of Lord Kylsant, and if that knowledge and understanding was present in his mind did he publish it with the fraudulent intent which the law required to constitute the offence? Matters of intent were matters which juries had to determine in every action of this character. The charge was one of fraud, of fraudulent intent. And in a sense it could only be decided by the jury as a matter of inference from a consideration of all the relevant circumstances. So far as the other evidence was concerned, there was the

fact—he did not know how far it was in any way definite or tangible in this connection—that if the dividend paid was 5 per cent. a certain remuneration was due to Lord Kylsant under his agreement which was in fact collected by him in 1927, but was not collected in 1926, because it was not due inasmuch as the dividend was only 4 per cent., and in 1928 he did not collect it, though it was passed by the accountants. However, there was that circumstance, and it was for the jury to determine what weight, if any, they should give to it. The question of intent was always one which juries considered in connection with possible motives. Without entering into any fine analysis, said his Lordship, it was quite obvious that motive and intent were two different things. A man might have an intent for which no motive could be given. On the other hand, a man might have a motive and yet he might not have the intent. In these days of large commercial combinations, the leaders of commerce, who were in positions of importance, might sometimes think of the affairs of a company rather in terms of a group, as it is called, than in terms of the company itself. That, *prima facie*, was an evil, because after all, however many companies might be associated in a group, and however much they might be under the control of one man or one body of men, still the primary duty in law was as between the board or the directors and the shareholders of that particular concern, *i.e.*, the people who had invested money in that concern. So motives might be of a somewhat complex character. It might be a motive that the chairman of a concern might feel that he ought to keep the flag of his company flying until circumstances became such that its flag must be lowered, or, to change the metaphor, there was the old saying that the captain of a ship might carry on at full sail because he was anxious to reach his destination, and might overstep the mark and lose either his masts or his sails, or both. The question of motive, therefore, in a case of this sort, might be of a very complicated character, and the jury must weigh all these considerations as well as they could.

Coming to the evidence of Lord Kylsant, Mr. Justice Wright did not repeat it in detail, but said that it might be summarised, though perhaps very imperfectly, as follows: Lord Kylsant's views, according to his evidence, were that there was a series of trade cycles, and that during the critical years of 1926 and 1927, the cycle, which had been on the down grade, had changed its direction and was tending towards the up grade. The year 1926, Lord Kylsant had stated, had commenced in a promising way, but then had come the general strike. The year 1927, as he had said, was better than 1926, and therefore, even then, in view of the facts of the case, he felt that he was justified in carrying on, although he did not, as he followed it, deny that the time might have come to give information to the shareholders beyond the mere fact of the dividend which might make them think that all was well; he had said that he left the exact form of that information to the accountants, and was satisfied with what they had done. These and other circumstances which would be present in the minds of the jury might be very material. No doubt it was important to keep the reputation of the company unimpaired, so far as he could, because of the guarantee which the Court had heard about. The jury had seen Lord Kylsant in the witness box and had heard his explanations, and had had an opportunity of forming an opinion as to his personal attitude as a matter of understanding and knowledge; the Judge did not think that on this matter, which was so essentially a matter for the jury, he could really help them further.

The jury must bear in mind that there were two questions. If they thought this balance sheet was published in such a form as to be misleading, they had then to ask themselves whether Lord Kylsant knew and realised that it was misleading. The point that he ought to have realised it, of course, was only one element in the consideration, if the jury thought he ought to have realised it; further, if he realised that it was calculated to mislead, did he deliberately publish it with the intention of misleading and deceiving the shareholders? It was a very serious issue. It could not be disposed of by saying that it was no use being wise after the event, because, of course, a very experienced and able business man was assumed to know, and must know, all the circumstances which were elicited in the course of the long, laborious and trying inquiry which had been necessary in the Court. Of course, the jury would bear in mind that however experienced and able a man he was, he might not have appreciated exactly all that was involved and that might be involved in what he was doing. However, that was a matter for the jury's decision. That was all that he felt it necessary to say concerning the charges on the first two counts as affecting Lord Kylsant. Of course, a charge must be established beyond any reasonable doubt; if the matter were left in reasonable doubt, then the benefit of that must go to the accused men.

Mr. Justice Wright then went on to deal with the prospectus and drew attention to certain passages, though no doubt they had been underlined by the jury and had been fixed in their recollection. He quoted as follows from the prospectus:—

> "Although this company, in common with other shipping companies, has suffered from the depression in the shipping industry, the audited accounts of the company show that during the past ten years the average annual balance available (including profits of the insurance fund), after providing for depreciation and interest on existing debenture stocks, has been sufficient to pay the interest on the present issue more than five times over.
>
> "After providing for all taxation, depreciation of the fleet, &c., adding to the reserves and payment of dividends on the preference stocks, the dividends on the ordinary stock during the last seventeen years have been as follows . . ."

Then there was set out a table showing the dividends paid in those years, and they were set out accurately. The average annual balance available was stated to be that shown in the audited accounts of the company for the ten years from 1918 to 1927. Of course it was perfectly true that these balance sheets did show the average annual balances, *i.e.*, if one put them down separately, and made the necessary adjustments, after providing for depreciation and interest on the debenture stock, and then divided the total so arrived at by ten, one would arrive at the average annual balance as being more than £500,000, because, of course, the five times over is £500,000. The dividends on the ordinary stock were also correctly stated. If the reference to adding to the reserves meant the published reserves, that again was perfectly true. In 1911, when the company was a very much smaller one, the reserves were something like £420,000 in all, whereas at the later date the published reserves, after taking off £150,000 in 1926, were still something like £2,760,000. So that all that was perfectly true. Of course, what was said was that, though this was true, there was such an economy of truth as to deceive an intending investor; it was said that although there were the annual balances shown on the balance sheet and profit and loss account, and though the dividends referred to were paid year by year, yet they gave no true account at all of the actual financial position of this company in the latter years of the period which was averaged. It was said that if, instead of averaging, there had been put into the prospectus a statement of the profits year by year as they accrued, it would have presented a very different picture, because in the bumper years up to 1920 and part of 1921 there would have been shown very large earnings and profits, and in the following years there would have been shown the state of affairs which the jury now knew, and which he was not going to repeat. It might well be that if a man of scrupulous honour were asking a friend to lend money to this concern he would not have been content with that statement, but would have told his friend what the position was, so that his friend could, on those facts, accurately make up his mind as to the true position of the company, and then, if he thought to himself, with that information before him, that although this company had done very badly in some years the tide might turn at any moment, and he was willing to take the

risk, he could not have complained. The friend might have said that he knew what the assets of the company were, that he knew that there were these reserve funds, and that there was a fleet and investments entered at, say, 18½ millions, but probably as a going concern worth substantially more, and if, with all that in his mind, he had decided to take the risk, he could not have complained. The jury might feel that in a prospectus there ought to have been a statement as complete, as fair and as candid as that. There were some provisions in the new Act as to what a prospectus asking for subscriptions to debentures must contain, but they were quite irrelevant here. That was a view as to what was fair, he might almost say as to what was honourable, but the jury had to deal not with the point of honour, but with the strict words of a criminal Act. It was true that the form of the prospectus was approved by the board of directors, and although the jury might bear in mind no doubt that the form of prospectus was approved by the board, they must also bear in mind that they were dealing with the actual responsibility of Lord Kylsant alone. Lord Kylsant said that he had consulted his Solicitor and Counsel as to whether the prospectus was sufficient or correct. Perhaps he was thinking of the possibility of civil proceedings. Perhaps this advice was taken because he had been anxious not to deceive or defraud anybody, but there was the fact that these measures were taken. No doubt he had personally subscribed to this issue and was allotted some debentures. That was put forward as showing that whatever he had done was done in good faith. The issue, as the jury knew, was over-subscribed.

After reading a passage from the evidence of Lord Kylsant, Mr. Justice Wright said he did not consider that it was necessary to go through it in full. The jury had heard it all and they no doubt remembered what impression it had made on their minds as a whole. With regard to the issuing of the prospectus, Lord Kylsant had, of course, certain material as to what were the considerations which might have had some influence in determining that issue at that time. They knew that there were a number of letters about an overdraft and in addition Lord Kylsant had indicated that it was desirable to provide additional capital for the new freehold building which was being erected and for the general purposes of the company. They had heard in some detail the history of how the prospectus developed. The original form had been put before them showing certain blanks which had afterwards been filled in with figures taken from the printed accounts. Of course they now knew how those figures were arrived at and how the averages were struck. There had been some question about the arrangement and the annual figures. If what was intended had been to publish the yearly profits, year by year, in the prospectus that would, of course, have given the investor a good deal of information which he would not have had in the form in which the prospectus was published. There had been reference to Mr. Morland's assistants, and of course all those inquiries which he was initiating would have been most relevant and the investor would have had a degree of information about which he could not, his Lordship imagined, possibly have complained. But that was not the form which the prospectus took, and it appeared that even if the figures of Mr. Morland's assistant had been adopted, still the average would not have come out any different, or at any rate not substantially different. It was obvious that if you took an average you might within the period during which that average was taken have very diverse figures. "I should imagine," said his Lordship, "I do not know, but one learns, if I ever think of investing on a prospectus, in the future I shall look very shyly indeed at any reference to averages. Indeed I am not sure if under the new Act such a thing could be done."

His Lordship, after detailing alterations which were made in the course of the preparation of the prospectus, reminded the jury of the form in which it was finally issued. The issue, as they would remember, met with very considerable success. "Well, now, of course," continued the Judge, "as a statement of the real position of the company this prospectus does leave very, very much to be desired if the investor was to make up his own mind on the actual facts. It does look as if it was carefully arranged and carefully prepared so as to put the best face on the position and to do so by stating a series of matters each one of which was strictly accurate. But certain relevant facts which were crucial if the investor was to know the true position of the company—for example, the circumstances under which the dividends had been paid during all those years, the use of reserves which had been built up, the possibility of the guarantee under the Trading Facilities Act not being renewed, and so forth—these and other matters were not stated." Here again the jury had to consider, was the form which was adopted, and which they might think erred by reticence, deliberately adopted with an intention to deceive? Was it not merely a case of prudent and well-advised reticence, or a case of malignant and wicked and treacherous deceit in order to defraud? This was one of those cases difficult, but not impossible, which had occurred from time to time in the course of company transactions, where a document had been put forward in order to be acted upon, and put forward in such a form that, though it stated every fact accurately, fact by fact, yet the true effect of what was given might be held to be completely false and completely misleading. That result might be achieved by a man acting with the best of intentions who, while his mind was fixed on the object of floating the issue, and while he was in a sense thinking of what was the best way to achieve that object, was not thinking and was not conscious that he was going to mislead people or that he was going to induce men to subscribe under a representation that was completely false and completely delusive. That man might have said to himself, "I will tell the facts quite fairly and accurately, and then I can quite honestly leave the person who reads the prospectus to make up his mind." All the time this man might have no consciousness that he was doing anything that was not right. If he was under a legal obligation to disclose all relevant facts he might be open to a civil action. In that Court, however, they were not concerned with civil liabilities; they were concerned with the offence stated in the indictment. It was set out as "circulating or publishing a certain written statement, to wit a prospectus, inviting the public to subscribe to an issue of 5 per cent. debenture stock in the Royal Mail Steam Packet Company which he knew to be false in a material particular in that it concealed the true position of the said company with intent to induce persons to entrust or advance property to the said company." That accusation meant that the person concerned fraudulently with wicked intent deliberately published that with the wicked design of defrauding. That again was a question entirely for the jury. Did they think that the document before them was a document which by accident or design innocently or criminally did mislead people? Did they think that people did invest on the faith of that document in the belief that it contained all that it ought to contain, whereas if they had been told the true facts they would not have put money into this concern? Were they of the opinion that people would have wanted some guarantee of the earning capacity of the company? The debenture holder, as they knew, was secured on the assets, but the ordinary man did not think of that. He simply wanted an investment which was secure and was likely to yield him an income year by year out of the assets of the company. It was common sense they might think in the circumstances that a man would not invest in a company at a time when it had a record of unfortunate working for some years past, however much it might have had a special credit to keep it going and to provide dividends. The jury had got to go further than that, and they had to consider very anxiously if, assuming they were satisfied that it was in truth and in fact a misleading document, was it deliberately put together with the intention of stating certain things and not stating other things so that anyone reading what was stated and without knowing what was not stated would be deluded and deceived as to the true nature of the company?

They would bear in mind that it was not always possible to be wise until after the event. On the other hand, they would consider whether there were at this time such reasons for obtaining further money as to form a motive for deceit. Still even that would not be enough. They must be satisfied before they could find a verdict against Lord Kylsant, not only that there was a motive, but that there was absolute deliberate and criminal intention to obtain from the investor money which he would not have parted with if he had known the true facts. It was not a question of whether what was done was strictly honourable. It was a question of whether the offence which was committed under the particular penal section which had been cited and which carried with it in the event of conviction consequences which inevitably flowed from conviction under criminal law.

His Lordship repeated that he did not think any useful purpose would be served by his going over the evidence at great length. The issues before the jury were a matter of judgment, and they would bear in mind what he had said about having to be satisfied that an offence was made out beyond reasonable doubt. It had been said that certain accounts which had been mentioned were themselves misleading and known to be so, and that the use of them in the prospectus would be some mark of illegal intent. It was quite obvious that that was, letter by letter, and word by word, an accurate document as far as it went, and it could only be found a basis for a charge of fraud if they were satisfied that there was a deliberate and wicked and criminal intent to concoct a false document.

The charges with which Mr. Morland was concerned, they would remember, had to be dealt with quite separately. They must keep their minds in considering his case definitely clear from any matters of which they had heard which were peculiar to Lord Kylsant and which did not apply to Mr. Morland at all. He would direct their attention to the words of the indictment which alleged that Mr. Morland had "aided and abetted, counselled or procured the said Owen Crosby Philipps, Baron Kylsant of Carmarthen, to commit the said offence." This meant that the charge against him was that of aiding and abetting, which was different from a charge of conspiring with Lord Kylsant to commit the offence. In a charge of conspiring the prosecution would have to establish actual agreement between the two men who were accused. In the case then before the Court aiding and abetting presupposed that an offence had been committed, and alleged that the accused man with knowledge that the offence was being committed aided and abetted—that was to say, knowingly and deliberately helped—the execution of the design of committing the offence. In the old days a man could not be charged with aiding and abetting until the principal offender had been convicted. One could not be charged with aiding and abetting something which the other man did not do. If Lord Kylsant did not commit the offence with which he was charged then the question of aiding and abetting could not arise. These matters, so far as Mr. Morland was concerned, only arose in that event. Of course, if the jury were satisfied that Lord Kylsant was guilty on the main charge against him in the first and second counts of the indictment then they could go on and consider whether Mr. Morland with guilty intent, knowing what Lord Kylsant was doing, and knowing his guilt and wickedness, was aiding and abetting him in committing the crime. A man might aid and abet in committing a crime and yet do so quite innocently, not knowing that he was doing anything of the sort. He might do something that was essential to the principal for the commission of the crime without any consciousness that he was aiding an offence. On the other hand, it was not necessary to prove that there was any communication between a principal offender and the man who was charged with aiding and abetting, because if the second man had deliberate purpose in assisting, if he did something which assisted the principal and if he knew that the principal was engaged in committing the offence, then the charge of aiding and abetting would be made out. Here again in the case of Mr. Morland the jury must be satisfied that the statement which he signed was false and false to his knowledge, was published by him with knowledge of its falsity, with an appreciation of its falsity, and with the intention that it should deceive the shareholders.

There were many differences, of course, on any view of the case between Mr. Morland's position and that of Lord Kylsant. Mr. Morland was an accountant and the auditor of the company. He had the accounts put before him, but not until they had passed the Court of Directors. He had nothing to do with the preparation of the accounts, and nothing to do with the declaration or decision to declare dividends. He had nothing to do with the general policy of the company. He had no knowledge—except incidentally with regard to the Meat Transport—of the subsidiary companies and their position. All he knew was the dividends which from time to time he had to deal with as representing the profits coming from those companies. He had, so far as could be seen, no motive at all for deceitful intention.

But of course, said his Lordship, it might be said against Mr. Morland that he did in fact add the sanction of his name as auditor to a document which, taking those two years 1926 and 1927, was false and misleading. As he had pointed out in another connection, however, it was not a question of whether or not Mr. Morland did something less than what could be expected as the full duty of a conscientious, careful auditor. He had to come honestly according to his skill and understanding to the conclusion that the accounts of the company presented a true state of the company's accounts. That was what he signed—that it was a true and correct view of the company's affairs. If he was not satisfied that he could give that certificate, his duty was either to qualify that certificate or to ask to have the accounts altered in such a way that he could sign them without qualification. It was obvious enough that in the year 1926, when the accounts for 1925 were being dealt with, he was not satisfied with the position, because he thought that some words ought to be added to intimate to the shareholders that moneys which were being used were being used in order to produce the balance which appeared. That being so, it was admitted that without some qualification in some form or another, he ought not to give a certificate, and the qualification which he put in were those words which the jury must almost be tired of hearing about—adjustment of taxation reserves. Those were the words which Lord Plender had turned into plain English. Mr. Morland had said that that had satisfied his doubts. He thought then that he had done enough to cure the defective character of the balance sheet and profit and loss account without those words. If he was right in that, if he discharged his duty sufficiently and properly, it seemed that, in any view of the matter, there was an end of the case against him, and he was not guilty. If, on the other hand, he was wrong in this sense, that in a civil action against him for not showing due care and skill, he would be held liable as a defendant because he had broken his duty and had not discharged his office, then again his liability would be a civil liability. That was assuming against him that he ought to have done something else and taken some more drastic, some more effective steps in order to bring to the mind of the shareholder the true position of the company's affairs. It might be that he did not discharge his duty sufficiently and properly. It might well be that an auditor in his position, standing as he did between the directors and the shareholders to protect the interests of the shareholders against any possibility of their being misled by the directors—it might well be that he took an imperfect view, an inadequate view of the very grave duties which rested upon auditors.

"The profession of accountancy, as you know," said Mr. Justice Wright, "is very distinguished and very honourable, and a very essential profession in the commercial affairs of this country. Great trust must be reposed on the skill and the judgment and the honour of accountants. It may well be that on occasion through error of judgment one of them may fail to do all that the requirements of his high office demands. But again we

are not concerned here with any question of civil liability or breach of duty. What you have to determine is whether, assuming that Lord Kylsant was guilty of [redacted] offence, there was any deliberate and conscious act on the part of Mr. Morland in carrying out that design by putting his hand to a certificate which he knew was not justified by the facts and he knew did not correspond with his duty." The prosecution alleged that the true and accurate view of the state of the company's affairs was not given. Did Mr. Morland know that and did he give the statement which had been published currency and validity by means of his certificate, and did he do so with criminal and wicked intent ?

Three accountants had said in the witness box that they would have signed the certificate in the same form. He (his Lordship) supposed that they would say that they would do so, under the same circumstances as Mr. Morland. It might be so, or not ; he did not know. He was quite sure that they believed what they had said, but that did not relieve the jury of deciding whether the certificate was one which Mr. Morland ought to have signed if he really appreciated his duty. They would have to say to themselves, did he appreciate that he was doing something wrongful, or did he honestly believe that he had discharged his duty by putting into the balance sheet those mystic words ?

Supposing that Mr. Morland honestly thought that that was enough, the jury on any view of the case would not find him guilty of fraudulent intent. However mistaken a man might be, however unfortunate the consequences of his mistake might be, that did not constitute a criminal offence or criminal intent. His Lordship said he had looked through Mr. Morland's evidence very carefully and he did not think that he could help the jury by going through it at any further length. They would recollect that Mr. Morland did not dispute that he was not satisfied with the accounts for 1925 in the form in which they were presented to him. " I shall simply leave the matter there with you," said his Lordship, " reminding you again, as I have reminded you on each previous occasion, that in a Criminal Court the jury have to be satisfied beyond reasonable doubt of the guilt of the person who is charged. That is the cardinal rule of British justice and in a Court of Law the rules of British justice and only those rules are the dominating feature."

In a Court of Law the jury could not cast their eyes outside on other considerations. Their duty had to be performed truly and unflinchingly according to the evidence and with no other consideration than to decide justly according to their skill and understanding. Bearing in mind that and bearing in mind what he had said, they would proceed to their duty.

" If you are satisfied beyond all reasonable doubt of the guilt of either of these defendants on any one or more of these counts you will not be deterred by considering the consequences—very serious consequences—which must follow from your verdict. In a Court of Law in a grave matter of this sort the jury have a very serious responsibility which may be of the utmost importance in the affairs of this country and in the commerce of this nation. But again, though that is so, you will not shrink from doing what is right and proper ; on the other hand, you must be satisfied before you come to any verdict against either of these defendants in this case."

This concluded his Lordship's summing-up.

The jury retired to consider their verdict, and after a fairly long absence they sent a note to the Judge. He directed that the jury should return to the Court. The Judge told them that it was necessary that their note should be read in open Court. He added, " The question you ask is referring to the words of the indictment ' with intent to deceive the said shareholders.' The question you ask is whether that intention must be fraudulent. You add, ' You cannot visualise an intent to deceive without it being fraudulent.' Neither can I. The intent must be fraudulent. The essence of the case is fraudulent intent to deceive. You cannot intend to deceive unless you have fraud in your mind. The two things are different ways of expressing the same thing, or rather the word fraudulent is a more compendious way of expressing an intent to deceive. Archibald gives a sort of head note or side note to sect. 84, 'Publishing fraudulent statements.' Then it goes on, ' Whosoever, being a director, publishes a written statement or account which he shall know to be false in any material particular with intent to deceive or defraud any member, shareholder, or creditor.' The essence of that section is that the statement should be fraudulent and the various expressions are merely ways of defining the particular fraud which the section contemplates. Therefore the answer to your question is, the intent must be fraudulent. The answer which I believe is used in other cases is in the affirmative.

The jury again retired, but subsequently were recalled by the Judge, who said that he had misread the note which they had previously sent to him. He had previously read it, " You cannot visualise an intent to deceive without it being fraudulent," whereas the jury had written, " You can visualise an intent to deceive without it being fraudulent." An intent to deceive necessarily involves a fraudulent intent.

Verdict.

The jury again retired and finally returned to the Court at 6.30 p.m., after being absent in all for nearly three hours.

Replying to the Clerk of the Court, the foreman of the jury stated that they found Lord Kylsant and Mr. Morland not guilty on the first and second counts of the indictment. On the third count of the indictment they found Lord Kylsant guilty.

The Judge said that Mr. Morland might be discharged, and he then left the dock.

In passing sentence on Lord Kylsant, the Judge said : Lord Kylsant, the jury have found you guilty on the third count of this indictment, which charges you with making, circulating, or publishing a certain statement, namely, a prospectus, inviting the public to subscribe to an issue of debenture stock in the Royal Mail Steam Packet Company, which you knew to be false in a material particular, in that it concealed the true position of the said company, with intent to induce persons to entrust or advance property to the said company. You have held very high positions and have had an honourable career, but the offence with which you have been found guilty is one which cannot be regarded as other than very grave and very serious, especially in a commercial community, and especially having regard to the fact that it was committed with reference to a prospectus on which members of the public were invited to subscribe their money. I do not wish to say anything further. It is my duty, in circumstances of this sort, to decide and to state what I consider the appropriate sentence, because some sentence I must pass as I am in duty bound for the offence which you have committed. I feel that I ought to take the most lenient view possible having regard to your past career. Indeed any sentence I may pass may be the least part of the punishment which will befall you. The sentence of the Court is that you be kept in prison in the second division for twelve months.

Sir John Simon intimated that an appeal would be lodged, and suggested that Lord Kylsant should be released on bail.

His Lordship replied that he had been told that it was not a matter within his jurisdiction. A Judge would be sitting in the High Court the following day, who could deal with the application. It was most unusual, although not unprecedented, for bail to be granted under such circumstances.

Sir John Simon said that application would be made elsewhere the following day, and added that the appeal would relate to the very important question of the construction of the section. That was a question of law. No leave to appeal was therefore required. He asked the Judge, however, to grant him a certificate which he would need if he raised matters which might be regarded as both law and fact.

The Judge replied that it had not been his practice to grant certificates, and suggested that the application should be renewed before him the following morning in the High Court.

APPENDIX.

The following are copies of the Company's Accounts for the years 1926 and 1927, and of the Prospectus issued in June, 1928 :—

GENERAL BALANCE SHEET AS AT DECEMBER 31st, 1926.

LIABILITIES.	£ s. d.	£ s. d.
Capital Authorised by Royal Charter ..	25,000,000 0 0	
Issued and paid up :		
5% Preference Stock	900,000 0 0	
6½% Cum. Pref. Stock	2,900,000 0 0	
Ordinary Stock ..	5,000,000 0 0	
		8,800,000 0 0
Reserve Fund	1,450,000 0 0	
Insurance Fund ..	1,300,947 7 8	
		2,750,947 7 8
		11,550,947 7 8
4½% Debenture Stock		1,400,000 0 0
5% Debenture Stock		3,100,000 0 0
Debenture Interest and Preference Dividends, *less* tax due January 1st, 1927 (since paid)		180,600 0 0
Dividends unclaimed at date ..		1,554 15 11
Bills Payable		588,550 13 1
Sundry Balances, Accounts not closed and debts owing by the Company (including loan from Bankers of £464,712 18s. 8d.)		2,842,440 17 9
Profit and Loss Account		266,782 9 2
		£19,930,876 3 7

ASSETS.	£ s. d.	£ s. d.
Book value of Fleet, Investments in Allied Shipping Companies, and in other Allied Companies		17,019,442 14 10
Premises at home and abroad		1,468,500 0 0
Plant, &c., at home and abroad		39,000 0 0
Stock of Coal		22,581 5 6
Stock of Naval and Victualling Stores ..		87,004 4 7
Unexpired Insurances		15,892 3 8
Sundry Investments		278,568 2 5
Freights, Mail Money, &c., under collection		149,681 19 3
Pending Voyages		130,733 1 7
Debts due to Company		285,385 4 7
Cash Balances, Bills Receivable, Balances in hands of Agents, and Accrued Interest on Investments		434,087 7 2
		£19,930,876 3 7

There are contingent liabilities amounting to £4,188,193 14s. 7d. for guarantees under the Trades Facilities Acts and bills under discount of a Subsidiary Company and in respect of uncalled capital on investments.

(*Signed*) KYLSANT, *Chairman.*
(*Signed*) D. I. CONRADI, *Secretary.*

I report that all my requirements as Auditor have been complied with, and that I have compared the foregoing Balance Sheet with the books of the Company. In my opinion, the Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs as shown by the books of the Company. I have verified the Bank Balances, and have inspected the Securities held for the Investments, which are valued under cost.

LONDON, *May 11th*, 1927. (*Signed*) H. J. MORLAND, *Auditor.*

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED DECEMBER 31st, 1926.

	£ s. d.	£ s. d.
To Interest :—		
On 4½% Debenture Stock	63,000 0 0	
On 5% ditto	155,000 0 0	
		218,000 0 0
„ Interest and Discount ..		55,209 17 6
„ Dividends :—		
5% on Preference Stock		45,000 0 0
6½% on Cum. Pref. Stock		188,500 0 0
„ Surplus in favour of the Company :—		
Proposed to be paid :		
4% on Ordinary Stock	200,000 0 0	
and to be carried forward	66,782 9 2	
		266,782 9 2
		£773,492 6 8

	£ s. d.	£ s. d.
By Balance from 1925 ..	294,956 13 4	
Less Dividend paid in June, 1926 ..	150,000 0 0	
		144,956 13 4
„ Balance for the year, including Dividends on Shares in Allied and other Companies, adjustment of Taxation Reserves, *less* Depreciation of Fleet, &c. ..	439,212 12 1	
„ Rents of Properties ..	38,906 6 0	
„ Transfer Fees	416 15 3	
		478,535 13 4
„ Transfer from Reserve Fund		150,000 0 0
		£773,492 6 8

ROYAL MAIL HOUSE,
MOORGATE, LONDON, E.C.2.
May 11th, 1927.

GENERAL BALANCE SHEET AS AT DECEMBER 31st, 1927.

LIABILITIES.	£ s. d.	£ s. d.
Capital Authorised by Royal Charter ..	£25,000,000 0 0	
Issued and paid up :		
5% Pref. Stock ..	900,000 0 0	
6½% Cum. Pref. Stock	2,900,000 0 0	
Ordinary Stock ..	5,000,000 0 0	
		8,800,000 0 0
Reserve Fund	1,450,000 0 0	
Insurance Fund ..	1,311,755 1 8	
		2,761,755 1 8
		11,561,755 1 8
4½% Debenture Stock		1,400,000 0 0
5% Debenture Stock		3,100,000 0 0
Debenture Interest and Preference Dividends, *less* tax due January 1st, 1928 (since paid)		180,600 0 0
Dividends unclaimed at date ..		1,375 7 11
Bills Payable		658,124 16 8
Sundry Balances, Accounts not closed and Debts owing by the Company (including Loan from Bankers of £428,484 8s. 3d.)		2,257,069 19 11
Profit and Loss Account		223,162 15 7
		£19,382,088 1 9

ASSETS.	£ s. d.	£ s. d.
Book value of Fleet, Investments in Allied Shipping Companies and in other Allied Companies		16,366,642 14 10
Premises at home and abroad		1,506,360 0 0
Plant, &c., at home and abroad ..		31,000 0 0
Stock of Coal		20,155 7 11
Stock of Naval and Victualling Stores ..		69,647 2 2
Unexpired Insurances		12,224 0 3
Sundry Investments		352,559 6 0
Freights, Mail Money, &c., under collection		143,988 13 2
Pending Voyages		157,872 17 3
Debts due to the Company		411,032 11 6
Cash Balances, Bills Receivable, Balances in hands of Agents, and Accrued Interest on Investments		310,605 8 8
		£19,382,088 1 9

There are contingent liabilities as follows :—

(*a*) Guarantees under the Trades Facilities Acts and bills under discount of a Subsidiary Company amounting to £3,353,959 8s. 6d.

(*b*) £1,655,590 uncalled capital on investments.

(*c*) Guarantee in respect of capital and dividend on 5,000,000 Preference Shares of the White Star Line, Limited.

(*Signed*) KYLSANT, *Chairman.*
(*Signed*) D. I. CONRADI, *Secretary.*

I report that all my requirements as Auditor have been complied with, and that I have compared the foregoing Balance Sheet with the books of the Company. In my opinion, the Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs as shown by the books of the Company. I have verified the Bank Balances, and have inspected the Securities held for the Investments, which are valued under cost.

LONDON, *May 9th*, 1928.

(*Signed*) H. J. MORLAND, *Auditor.*

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED DECEMBER 31st, 1927.

	£ s. d.	£ s. d.
To Interest :—		
On 4½% Debenture Stock	63,000 0 0	
On 5% ditto ..	155,000 0 0	
		218,000 0 0
„ Interest and Discount ..		29,412 11 11
„ Dividends :		
5% on Preference Stock		45,000 0 0
6½% on Cum. Pref. Stock		188,500 0 0
„ Surplus in favour of the Company :		
2% Dividend paid in November, 1927, on Ordinary Stock ..	100,000 0 0	
Proposed to be paid :		
3% on Ordinary Stock	150,000 0 0	
and to be carried forward	73,162 15 7	
		323,162 15 7
		£804,075 7 6

	£ s. d.	£ s. d.
By Balance from 1926 ..	266,782 9 2	
Less Dividend paid in June, 1927 ..	200,000 0 0	
		66,782 9 2
„ Balance for the year, including Dividends on Shares in Allied and other Companies, adjustment of Taxation Reserves, *less* Depreciation of Fleet, &c. ..	697,456 0 3	
„ Rents of Properties ..	39,361 16 10	
„ Transfer Fees	475 1 3	
		737,292 18 4
		£804,075 7 6

ROYAL MAIL HOUSE,
MOORGATE, LONDON, E.C.2.
May 9th, 1928.

PROSPECTUS.

THE ROYAL MAIL STEAM PACKET COMPANY.

CAPITAL AUTHORISED BY ROYAL CHARTER,	£25,000,000.
Capital Issued and Fully Paid	£8,800,000
4½% Debenture Stock	£1,400,000
5% Debenture Stock (not including present issue)	£3,100,000
Reserve Fund	£1,450,000
Insurance Fund	£1,311,755

ISSUE OF
£2,000,000

FIVE PER CENT. DEBENTURE STOCK AT THE PRICE
of £92 10s. per cent.
payable as follows:

On Application	5	per cent.
„ Allotment	5	„
„ July 25th, 1928	22½	„
„ September 19th, 1928	30	„
„ October 17th, 1928	30	„
	92½	per cent.

Applications must be made in multiples of £10.

Payment in full may be made on Allotment, under discount at the rate of 5 per cent. per annum. Thereafter payment in full can be made at any time under discount at the same rate as at the due date of the instalment following date of payment in full.

Scrip Certificates will be issued in exchange for Letters of Allotment as soon as practicable after allotment and will be exchanged for registered Debenture Stock Certificates after the date of payment of the final instalment.

The Stock will be issued in multiples of £10, and after registered Stock Certificates have been issued will be transferable in any amount not involving a fraction of £1.

Present Stockholders will receive preferential allotment if they apply on the special coloured form provided for the purpose.

Interest will be payable half-yearly, on 1st January and 1st July. A first interest payment of £1 15s. per cent. (less Income Tax) will be made on 1st January, 1929, after which the Stock will rank for interest equally with the existing 5 per cent. Stock.

The Company may at any time redeem the whole or any part of the Stock at par on giving six calendar months' notice to the Stockholders, but otherwise the Stock becomes redeemable only when the security created by the undermentioned Trust Deeds becomes enforceable.

This Stock forms part of an authorised issue of Stock, equal to the issued and paid-up Capital of the Company for the time being ranking subject to and immediately after the First Debenture Stock of the Company. The present issue of Stock will be secured by a Supplemental Trust Deed in favour of Trustees giving a charge by way of floating security upon the undertaking, property and assets of the Company, including uncalled Capital, subject only to the charge thereon created by the Trust Deeds for securing the First Debenture Stock for the time being issued which is not to exceed two-thirds of the paid-up Capital for the time being of the Company. The Trust Deeds securing the Stock of which the present issue forms part contain a provision prohibiting the Company, except as mentioned below, from creating any general charge upon its undertaking or property or from issuing any Debentures or Debenture Stock, or creating any specific mortgage or charge upon any of its ships in priority to or *pari passu* with the Debenture Stock. The right is reserved to the Company of creating and issuing from time to time further Debenture Stock ranking *pari passu* with this Stock to a total amount (including the £3,100,000 now issued and outstanding and the present issue) not exceeding the issued and paid-up Capital for the time being of the Company. The right is also reserved to the Company from time to time to issue further First Debenture Stock, ranking in priority to the Second Debenture Stock to an amount (including the £1,400,000 already issued) not exceeding two-thirds of the paid-up capital for the time being of the Company.

PROSPECTUS.

The Company was established by Royal Charter in 1839, and its powers have been extended by subsequent Royal Charters granted in the years 1851, 1882, 1904, 1912 and 1920. Under the Charter of 1904 it is stipulated as a cardinal principle of the Company that it is to be and remain under British control.

The object of this issue is to provide additional Capital for the new Freehold Building, Royal Mail House, Leadenhall Street, London, E.C., and for the general purposes of the Company.

The Company has issued no Debenture Stock since November, 1914.

The combined fleets of the Royal Mail Steam Packet Company and of the Shipping Companies of which the Royal Mail Steam Packet Company holds all the Stock or Shares consist of 116 steam and motor ships, including new vessels under construction, with an approximate gross register tonnage of 798,454 tons, whilst the combined fleets of the other Shipping Companies closely associated with the Royal Mail Steam Packet Company and in which it is largely interested, represent a further gross register tonnage of 1,963,515 tons, making an aggregate total of 2,761,969 gross register tons. Many of the ships are fitted with refrigerating machinery for the carriage of chilled and frozen meat and other perishable products.

The interest on the present issue of Debenture Stock will amount to £100,000 per annum.

Although this Company, in common with other Shipping Companies, has suffered from the depression in the shipping industry, the audited Accounts of the Company show that during the past ten years the average annual balance available (including profits of the Insurance Fund), after providing for depreciation and interest on existing Debenture Stocks, has been sufficient to pay the interest on the present issue more than five times over.

After providing for all taxation, depreciation of the fleet, &c., adding to the Reserves and payment of dividends on the Preference Stocks, the dividends on the Ordinary Stock during the last seventeen years have been as follows:—

Year ended December 31st, 1911	5%
„ „ „ „ 1912	6%
„ „ „ „ 1913	6%
„ „ „ „ 1914	Nil
„ „ „ „ 1915	6%
„ „ „ „ 1916	7%
„ „ „ „ 1917	7%
„ „ „ „ 1918	7%
„ „ „ „ 1919	8%
„ „ „ „ 1920	7%
„ „ „ „ 1921	6%
„ „ „ „ 1922	6%
„ „ „ „ 1923	6%
„ „ „ „ 1924	6%
„ „ „ „ 1925	5%
„ „ „ „ 1926	4%
„ „ „ „ 1927	5%

A brokerage of £1 per cent. will be paid by the Company to Bankers and Stockbrokers in respect of all allotments made to the public on application forms bearing their stamp.

Applications on the Form accompanying the Prospectus should be forwarded to the Bankers, together with the deposit of 5 per cent.

If no allotment be made, the deposit will be returned in full. Should a partial allotment only be made, the surplus deposit will be appropriated towards the amount due on allotment, and any balance will be returned. Interest at the rate of 7 per cent. per annum will be charged on all overdue amounts. Failure to pay any instalment on Stock allotted when due will render the allotment liable to be cancelled and all previous payments made in respect thereof liable to forfeiture.

Copies of the Royal Charter granted to the Company in 1839, of the supplemental Royal Charters granted in 1851, 1882, 1904, 1912 and 1920, of the Trust Deeds securing the Debenture Stocks already issued, and of the draft supplemental Trust Deed to secure the present issue, may be seen between the hours of 11 a.m. and 4 p.m. at the Offices of the Company's Solicitors, Ashurst, Morris, Crisp & Co., 17, Throgmorton Avenue, London, E.C., on any day while the Subscription List remains open.

Prospectuses and Forms of Application may be obtained at the Offices of the Company, Royal Mail House, Moorgate, and Atlantic House, Moorgate, London, E.C., America House, Cockspur Street, London, S.W., and at the Offices of the Company in Southampton, Liverpool, Manchester, Birmingham, Cardiff and Glasgow, or from the Bankers and Brokers of the Company.

INDUSTRIAL AND PROVIDENT SOCIETIES' REPORT.

The following are extracts from the Report of the Chief Registrar of Friendly Societies for the year 1929 :—

DEFALCATIONS.

(1) Defalcations involving a total loss of £8,107 were shown by the Blackburn (Amalgamated) Co-operative Society, Limited, and a cashier in the society's share capital department received a sentence of three years penal servitude for these frauds, which had been covered up by withdrawals of share capital under fictitious names. The frauds were discovered accidentally as the result of the auditor delaying his checking of the additions on the list of balances abstracted from the share ledger accounts. At the first quarterly audit in 1928, the auditor found that individual items had been altered, resulting in disagreement of the totals on the abstract sheets. The frauds had extended over a period of four years and had the auditor completed this audit as early as in previous quarters the frauds doubtless would have continued even longer. At past audits the defaulter had taken the precaution not to erase from the abstract lists the fictitious ledger balances until after the auditor had checked the abstract totals. The auditor admitted that he had not for some time checked the individual postings to the share ledger, and cannot have made proper inquiries as to the system of internal check. Had he done so he must have discovered that the defaulter for some considerable time not only acted as a cashier, but had been allowed to make all ledger entries involving his own cash transactions and receipts—a most undesirable practice. It should be mentioned that the return for 1928 as submitted to this office contained a clear audit certificate, and that it was only as the result of lengthy inquiries addressed to the chairman of the society and the auditor that the Registrar became aware of the facts notwithstanding that a special committee of inquiry had been appointed by the society's members to "investigate the system of book-keeping and auditing which had permitted such irregularities." The society recovered nothing in respect of the defalcations, but has since reorganised the whole of its staff, has instituted a proper system of internal check, and in addition has changed its auditor.

(2) Serious irregularities were discovered in 1928 involving the Poynton and Worth Industrial Co-operative Society, Limited, in a net loss of £903, of which only £200 was recovered under a guarantee policy. The secretary was unusually late in producing his accounts in 1927, and was suspended until a special investigation had been made into his accounts. It was found that defalcations had been covered by fictitious withdrawals from members' share and other accounts, which necessitated an addition to these accounts, by way of adjustment, of £3,460. It was also discovered that the secretary had paid National Health Insurance benefits and dealt with individual deposit transactions using the society's funds, but without making any entries in its books. Consequently a large part of the £3,460 was eventually recovered from the National Health section, the Bank, and the collective life department of the Co-operative Wholesale Society, Limited, leaving the net loss to the society as above stated. The return for 1928 as submitted in the first instance showed certain adjustment entries, which did not, however, disclose the fact that any defalcations had occurred. Moreover the return contained a clear audit certificate. The Registrar after lengthy inquiries obtained a corrected return accompanied by a special report by the auditor, who previously had only reported verbally to the committee and members.

INCORRECT ACCOUNTING.

A few examples of errors discovered in accounts follow.

(1) The inadvisability of a society appointing, as liquidator, a person not conversant with accounts, is seen from the following case which came to notice during the year.

The return to commencement of liquidation of the Brown Lees Working Men's Club and Institute, Limited, a comparatively small society, was submitted by the liquidator, who was an unqualified person. It contained several inaccuracies, and had to be sent back for amendment three times before it appeared to be correct. When, however, the statement covering receipts and disbursements for the first twelve months of the liquidation was submitted, it showed as bank balance brought forward only 10s. 5d., as compared with £5 10s. 5d. in the return to commencement of liquidation. When asked for an explanation, the liquidator wrote ". . . The £5 was not an actual balance, but purely imaginary, and was inserted solely to balance the account."

(2) The income and expenditure account in the return of the Buckley Working Men's Social Club and Institute, Limited, incorrectly included an item "Repaid Steward's Deposit." The cash account showed a corresponding payment, but brought forward as the total cash and bank balance an amount which was exclusive of the steward's deposit. The return was sent back for correction accordingly, and the alterations, initialled by the auditor, resulted in a reduction in the balance of loss on the year from £54 to £4.

The following are cases reported by the Assistant Registrar for Scotland :—

(3) The annual return for 1928 of the Sanday Agricultural Co-operative Society, Limited, contained an entry "Sums accumulated in hands of egg collectors written off £288 5s. 5d." The annual returns for several years had shown cash in hands of egg collectors amounting to

between £300 and £400; and although these returns were signed by the secretary, who had been in office for about six years, he could not give any satisfactory explanation of the £288 5s. 5d. included in those cash balances and now written off. The £288 5s. 5d. appears to have been a balance shown in the books when he took office. The society was only a small one, and the amount written off represented approximately one-fifth of the total assets. The matter has been brought to the notice of the auditor, who states that he had on two previous occasions questioned the society concerning the matter, although he had not made a special report on the annual returns. He has undertaken in future to pay particular attention to the verification of the cash.

(4) Another small agricultural society, the Papa Westray Agricultural Co-operative Society, Limited, wrote off £72 described as "Errors in debtors in previous years." Previously the amount owing by sundry debtors, although properly shown as an asset in the balance sheet, had also been included in the balance of cash in hands of the secretary. Although in connection with the return for 1927 the Assistant Registrar had questioned the large amount reputed to be in the secretary's hands he had been assured that the return was correct, although it now appears that the cash in hand was overstated in that return by £44.

Auditors' Special Reports.

The value of the statutory audit is considerably enhanced by the obligation on the auditors to make special reports where they are unable to give a clear certificate. Besides sending a copy of such a report to the Registrar so that it may be available for public inspection, the society is required always to keep a copy of the last balance sheet and any such report hung up in a conspicuous place at its registered office. In addition, the report must be submitted to the members in general meeting, when the relative set of accounts is presented to them. It occasionally happens that a copy of a special report is not sent to the Registrar with the annual return, and in some instances accounts are printed and published which make no reference to a special report, although it qualifies the certificate of the auditor to the accounts. In all such cases which come to the Registrar's notice steps are taken to have the matter rectified.

During the year several cases came to notice where, although the public auditor had given a clear certificate to the statutory return, the facts called for the qualification of the audit certificate and the issue of a special report to the members. Some auditors do not appear to have realised their obligations not only to the members by whom they were appointed but to the Registrar, who is required to produce the statutory return of any registered society for inspection by any member of the public upon payment of the prescribed search fee. In some instances auditors were informed that in the opinion of the Registrar disclosure of an item of defalcation in a return would not enable them to give a clear audit certificate, or relieve them from their duty of making a special report. In some instances auditors have thought it sufficient to report to a society's committee for its information instead of to the members. Unless the matter of the report is definitely outside the provision of sect. 13 (2) of the Industrial and Provident Societies Act, 1893, the Registrar considers that an auditor should qualify his audit certificate to the accounts, and deal fully with the matter in a special report to the members by whom he is appointed.

EXPENSE OF LITIGATION.

In our July issue we published the Observations of the Bar Council and the Law Society on the Report of the London Chamber of Commerce on this subject. The Chamber has now issued a reply, of which the following is the concluding summary, together with their more extended comments on some of the main points.

Summary.

The general result of the investigations made by the Chamber, the Bar Council and the Law Society, coupled with the observations of Mr. Justice Roche, is to show that all are in agreement:—

(*a*) That the cost of litigation under the present procedure is higher than is necessary.
(*b*) That the remuneration of the average solicitor or barrister under the present procedure is reasonable (except as regards the two-thirds rule).
(*c*) That the main reduction in expense must therefore be obtained by alterations in the system and procedure.
(*d*) That there should be a consideration by the Master of the Court, or a Judge, after pleadings as to the further procedure to be adopted.
(*e*) That dates of trials should be fixed.
(*f*) That documents should be accepted in evidence without formal proof unless challenged.
(*g*) That evidence from abroad should be given in written form such as affidavit or declaration.
(*h*) That written evidence, such as by affidavit or declaration, should be more widely used in substitution for oral evidence.

As regards Counsels' fees, the Chamber and Law Society appear to be in agreement, whereas the Bar Council disagrees.

There are other important aspects of the matter on which the Chamber goes much further than the Bar Council, and in these respects we recommend that the Chamber should adhere to its previous report, as we feel convinced that unless the reforms advocated by the Chamber are made compulsory (and it is made necessary to contract out), such changes may be ineffective. But in view of the extent to which all concerned appear to be in agreement, we submit that there now appears to be no obstacle to the authorities immediately altering the rules of the Supreme Court in order to provide for changes on these lines without waiting for further discussion of the questions on which all concerned are not in agreement. It does not appear to require legislation to provide for the changes on which the different interests are agreed, and it seems to us that there should be no difficulty, therefore, in a substantial instalment of the reforms indicated being carried into effect at once.

Substitution of Written for Oral Evidence.

As regards the substitution of written evidence for oral evidence, our attention has been drawn to some observations of Mr. Justice Wright reported in *The Times* of July 15th, in which Mr. Justice Wright mentioned that a witness, if present in the Court, could be cross-examined, that affidavit evidence required considerable care, and that the whole idea of affidavit evidence for the expeditious and simple handling of cases would break down if documents such as those he criticised were employed; we wish to point out that the Chamber's Report did not suggest that written evidence was intrinsically superior to oral evidence given by witnesses present in Court, but, if greater economy in the cost of litigation is to be obtained, that it would be necessary, in the opinion of the Chamber, to do away so far as possible with the attendance of

witnesses and to substitute written evidence. As the Chamber pointed out, the English procedure is, *apart from cost*, the most perfect of its kind in the world, but it is an expensive luxury and beyond the means of the majority of people. If it is to be cheapened a less perfect procedure must be adopted, even at the risk of such less perfect procedure being distasteful to those who are accustomed to the present procedure. It seems to us that either the existing procedure as to evidence must remain in force, in which case we do not see how material reductions are to be made, or it must be made compulsory (unless in exceptional cases when the Judge may order to the contrary) to adopt a cheaper procedure. We recognise that there must be disadvantages in written evidence as compared with the evidence of witnesses personally present and cross-examined, but if it is decided that the cost of litigation is to be reduced the disadvantages must be accepted and treated as being compensated for by the consequent reduction in expense.

TRIAL.

We are glad to see that the Council agrees with the recommendation of the Chamber, as do the Law Society. It is, of course, not humanly possible to guarantee that a case should always come on for trial on the date fixed for the trial. This does not always happen in the Admiralty or Commercial Court, but if the lists are prepared as carefully as possible, and if the idea is abandoned that there is anything wrong in a Judge finishing his list before 4 o'clock, then the majority of cases should be reached on the day fixed. Also the important benefit is, in any event, attained that a case cannot come into the list before the date fixed. This would prevent the difficulties which sometimes arise where under the present system this happens. Seeing that the three Reports are all unanimous on this point, it is to be hoped that the authorities will make arrangements to carry out this plan. Of course there will be difficulties in changing from one system to another, but, as we have pointed out, the fact that changes involve difficulties is not an argument in favour of never making changes.

THE TWO-THIRDS RULE.

We have given this subject our further careful consideration, and are still of the same opinion. If the recommendation in the Chamber's Report is carefully read it will be seen that it is not directed to cases where a fashionable Leader is employed. It refers to the system, and points out that if a Leading Counsel (meaning any Leading Counsel whether having a large practice or not) is employed, the Junior Counsel has less responsibility, but, nevertheless, is entitled to two-thirds of the Leading Counsel's fee. It then goes on to point out that if a Leading Counsel of great eminence (not an average King's Counsel) is employed, then the Junior Counsel's fee increases accordingly under the two-thirds rule, although his responsibility may decrease further by the employment of a Counsel of great eminence. This sub-committee is, of course, well aware that there is no difficulty in securing the services of competent Leading Counsel who are not "fashionable," but that does not affect the point that the Junior Counsel gets two-thirds of whatever is the Leading Counsel's fee, and whatever the standing of the Leading Counsel. This is a point on which litigants feel strongly and on which opinion in the Chamber is unanimous. The recommendation of the council to modify the existing practice in cases where the Leader's fee exceeds 150 guineas affords no real relief because it only affects very heavy cases, and leaves the average class of case untouched, and we could not recommend the Chamber to consider this concession which would be valueless in the great majority of cases. If the members of the Junior Bar were to abandon entirely the two-thirds rule, provided that they received a higher fee than at present for settling pleadings and advising on the evidence to be called on a trial and the merits of a case, then we think that in the long run they would be better off than at present, as the cases in which pleadings are drawn and opinions given on evidence are considerably more numerous than the number of cases which go to trial. We therefore adhere to the recommendation that the two-thirds rule should be abolished.

NATIONAL SAVINGS MOVEMENT.

Schemes of Saving.

We published in our issue of March, 1930, an account of two Schemes of Saving produced by the National Savings Committee for the purpose of extending the work of the National Savings Movement in places of employment. Under these two schemes, known as Scheme 9 and Scheme 10, employers are enabled to give very direct encouragement to their employees in saving to make provision for future needs and for retirement. The schemes have been widely adopted throughout the country, both by ordinary commercial firms and by firms carrying on professional business. The gratifying measure of success already achieved leads the National Savings Committee to entertain large hopes for the general adoption of these schemes when improved trade conditions make it easier for employers to give their employees the form of encouragement in saving upon which the schemes are based.

The National Savings Committee has several other schemes of savings available, all carefully adjusted to meet a large range of needs. Of these the most popular for office staffs is Scheme 8, in which the weekly or monthly agreed contributions are pooled, and the total amount invested in National Savings Certificates, which Certificates are allotted to the members by ballot. One simple form of account is all that has to be kept. Full information may be obtained from the National Savings Committee, Sanctuary Buildings, Westminster, London, S.W.1.

BANKRUPTCY ORDER (ENGLAND).

The following Order as to Bankruptcy Fees has been issued under date June 25th, 1931 :—

The Lord Chancellor and the Treasury in pursuance of the powers and authorities vested in them respectively by sect. 133 of the Bankruptcy Act, 1914, and sects. 2 and 3 of the Public Offices Fees Act, 1879, do hereby, according as the provisions of the above mentioned enactments respectively authorise and require them, make, sanction and consent to, the following Order :—

1. In Table A in the First Schedule to the Bankruptcy Fees Order, 1930, in Fee No. 14 (which relates to an application to approve a composition), after the description of the proceeding and before the existing note, the following additional note shall be inserted :—

> "*For the purpose of calculating this fee, the gross amount means the amount to be provided under the terms of the composition for ordinary and preferential creditors, and for costs, charges and expenses, and for fees and percentages (other than this fee).*"

2. This Order may be cited as the Bankruptcy Fees (Amendment) Order, 1931, and shall come into operation on the 1st day of July, 1931, and the Bankruptcy Fees Order, 1930, shall have effect as amended by this Order.

FINANCE ACT, 1931.

The following are the provisions of the Finance Act in so far as they relate to Income Tax, Sur Tax and Savings Certificates :—

PART II.

INCOME TAX.

5.—(1) Income tax for the year 1931-32 shall be charged at the standard rate of 4s. 6d. in the £, and, in the case of an individual whose total income from all sources exceeds £2,000, at such higher rates in respect of the excess over £2,000 as Parliament may hereafter determine.

(2) All such enactments as had effect with respect to the income tax charged for the year 1930-31 shall (subject to such of the provisions contained in the Finance Act, 1930, with respect to income tax as did not take effect with respect to the income tax charged for the year 1930-31) have effect with respect to the income tax charged for the year 1931-32.

SUR TAX RATES FOR 1930-31.

6.—Income tax for the year 1930-31 in respect of the excess of the total income of an individual over £2,000 shall be charged at rates in the £ which respectively exceed the standard rate by the amounts specified in the second column of the following table :—

In respect of the first	£500 of the excess	1s. 0d.
In respect of the next	£500 of the excess	1s. 3d.
In respect of the next	£1,000 of the excess	2s. 0d.
In respect of the next	£1,000 of the excess	3s. 0d.
In respect of the next	£1,000 of the excess	3s. 6d.
In respect of the next	£2,000 of the excess	4s. 0d.
In respect of the next	£2,000 of the excess	5s. 0d.
In respect of the next	£5,000 of the excess	5s. 6d.
In respect of the next	£5,000 of the excess	6s. 0d.
In respect of the next	£10,000 of the excess	6s. 6d.
In respect of the next	£20,000 of the excess	7s. 0d.
In respect of the remainder of the excess	..	7s. 6d.

CONSTRUCTION OF RULE 20 OF GENERAL RULES.

7.—(1) The provisions of Rule 20 of the General Rules, which authorise the deduction of the appropriate tax from any dividend paid by a body of persons, shall, in relation to a dividend paid by any body of persons, whether before or after the commencement of this Act, be construed as authorising the deduction of tax from the full amount paid out of profits and gains of the said body which have been charged to tax or which, under the provisions of the Income Tax Acts, would fall to be included in computing the liability of the said body to assessment to tax for any year if the said provisions required the computation to be made by reference to the profits and gains of that year and not by reference to those of any other year or period.

(2) Subject as hereinafter provided, a dividend paid by a body of persons, whether before or after the commencement of this Act, shall, to the extent to which it is paid out of such profits and gains as are mentioned in sub-sect. (1) of this section, be deemed, for all the purposes of the Income Tax Acts, to represent income of such an amount as would, after such deduction of tax as is authorised by the provisions of the said Rule 20, be equal to the net amount received :

Provided that the provisions of this sub-section shall not apply to a preference dividend to which sect. 12 of the Finance Act, 1930, applies, and shall have effect subject to the provisions of sub-sect. (3) of that section.

AMENDMENT AS TO PAYMENT OF TAX BY INSTALMENTS.

8.—Sub-sect. (2) of sect. 157 of the Income Tax Act, 1918 (which provides that in the cases to which that sub-section applies income tax shall be payable in two equal instalments), shall have effect as if for the words "two equal instalments, the first on or before the first day of January in that year, or on such other day as aforesaid, and the second on or before the following first day of July" there were substituted the following words, "two instalments, the first, being an amount equal to three-quarters of the tax, on or before the first day of January in that year, or on such other day as aforesaid, and the second, being an amount equal to one quarter of the tax, on or before the following first day of July."

EXTENSION OF SECT. 18 OF FINANCE ACT, 1923, TO PROFITS FROM BUSINESS OF AIR TRANSPORT.

9.—Sect. 18 of the Finance Act, 1923 (which gives relief from double taxation in the case of profits arising from the business of shipping), shall apply in relation to profits or gains arising from the business of air transport as it applies in relation to profits or gains arising from the business of shipping, and accordingly the said section shall have effect as if—

(1) In paragraph (*a*) of sub-sect. (1) thereof, after the words "from the business of shipping," there were inserted the words "or from the business of air transport"; and

(2) After the word "ships," in sub-sect. (4) thereof, there were inserted the words "and the expression 'business of air transport' means the business carried on by an owner of aircraft."

PART IV.

EXEMPTION OF SAVINGS CERTIFICATES HELD BY PERSONS DOMICILED IN CHANNEL ISLANDS OR ISLE OF MAN FROM ESTATE DUTY.

41.—Where the holder of a war savings certificate or a national savings certificate is at the time of his death domiciled in the Channel Islands or the Isle of Man, his rights under the certificate shall, for the purposes of the enactments relating to estate duty payable in Great Britain, be deemed to be property situate out of Great Britain.

AMENDMENT OF SECT. 42 OF FINANCE ACT, 1920.

42.—For the definition of "dealer" in sub-sect. (3) of sect. 42 of the Finance Act, 1920, there shall be substituted the following definition :—

"The expression 'dealer' means a person who, being a member of a stock exchange in Great Britain, is recognised by the committee of that exchange as carrying on the business of a dealer."

Provided that if His Majesty in Council is pleased to declare that the Parliament of Northern Ireland have so amended the said sect. 42 in its application to Northern Ireland as to extend the benefits thereof to all persons who are dealers within the meaning of the foregoing definition, the said definition shall thereafter have effect as if for the words "Great Britain" there were substituted the words "the United Kingdom."

PROLONGATION OF CURRENCY OF SAVINGS CERTIFICATES.

43.—(1) Notwithstanding anything in any enactment relating to savings certificates, or in any regulation made under any such enactment or any conditions relating to the issue of any savings certificates, the Treasury may from time to time direct that the currency of any savings certificates to which the direction applies shall be prolonged to such extent and on such conditions as to interest and otherwise as may be specified in the direction :

Provided that nothing in this section shall—

(*a*) Prejudice the right of any holder of a savings certificate, if he so desires, to have the amount payable under the certificate paid to him on or before maturity; or

(*b*) Authorise the prolongation beyond March 31st, 1940, of the currency of any savings certificate issued on or before March 31st, 1922.

(2) It is hereby declared that the power of the Treasury under sub-sect. (2) of sect. 46 of the Finance Act, 1926,

to make arrangements for enabling the holders of any savings certificates to exchange them for other securities, includes power to make arrangements for enabling the holders of savings certificates of any issue to exchange them for savings certificates of a later issue.

(3) In this section the expression "savings certificate" means a war savings certificate or a national savings certificate, and the expression "currency" in relation to a savings certificate means the period at the expiration of which the certificate is required to be redeemed or repaid.

Reviews.

The Accounts of Executors, Administrators and Trustees. *6th Edition. By W. B. Phillips, F.C.A. London: Sir Isaac Pitman & Sons, Limited, Parker Street, Kingsway, W.C.2.* (164 *pp. Price* 5*s. net.*)

This is a useful book. It purports to deal with the accounts aspect of executorships only, but, as the author points out, this necessitates also a certain knowledge of the law. An important feature, which will be found particularly useful to students, is the example given of the administration of a Trust, commencing with an epitome of the Will, showing the Cash account and Ledger accounts, and finishing with the Residuary account. In addition to this there are interspersed throughout the book various other accounts and rulings.

Income Tax, Super Tax and Sur Tax, 1931-32, with Land Value Tax Supplement. *By C. H. Tolley. London: Waterlow & Sons, London Wall and Birchin Lane, E.C.3. (Price with Irish Free State Supplement* 3*s.* 6*d. post free, and with Land Value Tax Supplement* 6*d. extra.*)

This chart gives in very condensed form a large amount of useful information and in every case a reference to the source from which the information is derived, which may be either the section of an Act or a decision of the Court by which an interpretation of the law has been laid down. The Land Value Tax supplement contains a synopsis in the form of a chart of the somewhat complicated provisions relating to the taxation of land values. In this chart the author deals with the procedure in making valuations, appeals against these valuations, and the assessment and recovery of tax, with notes as to the abatements which may be obtained. The supplement is published separately at the price of 1s.

Questions and Answers on Company Law. *2nd Edition. By G. W. Fortune, F.S.A.A., and D. R. Matheson, M.A., A.S.A.A. London: Sir Isaac Pitman & Sons, Limited, Parker Street, Kingsway, W.C.2.* (168 *pp. Price* 5*s. net.*)

This is eminently a students' book and has been designed by the author as such. As the title indicates, it takes the form of questions and answers, which is often the shortest and most effective way of conveying the substance of legal enactments. The matters dealt with include the constitution of a company with Memorandum and Articles of Association, the formalities of a prospectus, the provisions as to private companies, accounts and audit, meetings, winding up, and other matters. The answers to the questions are brief, taking the form that might be regarded as ideal for examination purposes. The book is a useful one for revision purposes.

Practical Directorship. *By Henry E. Colesworthy, A.C.A., A.S.A.A. London: Sir Isaac Pitman and Sons, Limited, Parker Street, Kingsway, W.C.2.* (266 *pp. Price* 10*s.* 6*d. net.*)

Mr. Colesworthy has produced a very useful guide for directors, and it is to be hoped that they will make themselves acquainted with its contents. If they do so, and carry out the advice which is given, they will not be found wanting in the execution of their duties, of which the author has set out the practical effect as established by custom and legalised or amplified by the Companies Act, 1929. Another object kept in view is that the revival of trade will be helped forward by efficient and practical directorship for which purpose every person acting as a director should make himself capable, instead of relying, as is not infrequently done, upon the knowledge and experience of one or two members of the board. Amongst the subjects discussed are the control of production and finance, the annual accounts with the allocation of profit and provision of reserves, the position of directors with regard to a prospectus, the control of branches, and the arranging of an internal audit. The Appendix contains the sections of the Companies Act, 1929, which relate more particularly to directors and their duties.

Changes and Removals.

Mr. J. W. Carter, Incorporated Accountant, has taken into partnership Mr. George O. W. Pickard, Incorporated Accountant. The practice will be continued at Pearce's Chambers, 51, Albion Street, Leeds, under the firm name of Carter & Pickard.

Mr. Frank T. Goodliff, Incorporated Accountant, 5A, Castle Square, Brighton, has admitted into partnership Mr. Henry L. George, A.C.A., Incorporated Accountant. The practice will be continued under the firm name of Frank T. Goodliff & George.

Mr. F. H. Harman, Incorporated Accountant, has removed his office to Dewar House, 11, Haymarket, London, S.W.

Mr. Alfred Neill, Incorporated Accountant, announces a change of address to Westminster Bank Chambers, 196 and 198, High Street, Stoke Newington, London, N.

Messrs. Pike, Norfolk & Co., Incorporated Accountants, 8, Colne Road, Clacton-on-Sea, announce that Mr. G. E. Pike, F.S.A.A., has retired from the firm. The practice will be continued under the same firm name by Mr. W. J. Norfolk, F.S.A.A., in conjunction with Mr. N. E. Pawsey, A.S.A.A., who has been admitted into partnership.

Messrs. Rawlinson, Allen & White, Incorporated Accountants, have removed their Belfast office to Ocean Buildings, Donegall Square East.

Mr. Harold Smith, A.S.A.A., announces that he has commenced to practise at 4 and 5, County Chambers, Weston Road, Southend-on-Sea, Essex, 11, Queen Victoria Street, London, E.C., and 31, Churchfield Road, Acton, London, W., under the style of H. Morgan, Smith & Co., Incorporated Accountants.

Mr. W. J. Whitley, Incorporated Accountant, has commenced public practice at Myrtle Chambers, Bingley.

Mr. Henry Yates, Incorporated Accountant, has commenced public practice at 32, Lune Street, Preston.

Mr. E. J. D. Lloyd, of the Borough Treasurer's Department, Acton, London, Incorporated Accountant, has been appointed Borough Treasurer of Wednesbury.

Money, Prices and Trade.

A LECTURE delivered before the Incorporated Accountants' Students' Society of London and District by

MR. A. A. GARRETT, M.A., B.Sc.,
Secretary, Society of Incorporated Accountants and Auditors.

The chair was occupied by Mr. A. S. WADE, City Editor of the *Evening Standard.*

Mr. GARRETT said: I agree with that delightful writer, Mr. E. V. Lucas, when he says: "I can remember no time when people talked so much about money as they do now: the money of which they have very little and of which they will soon have none—but money none the less." Broadcast addresses on monetary questions follow football results and the weather forecast. The public taste is equally partial to Mr. Wade's notes on the Fuss about Gold and to advice by Ajax on Winners. Monetary and allied questions have become popular.

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It is sometimes thought this question is a highbrow one which ought to be left to experts. But I suggest that some popular understanding of the subject, especially by our profession, is all to the good. I believe that the bitter experience of the present is cultivating knowledge to guide monetary policy and action in the future.

Money.

DEFINITION.

Money has many definitions. I will confine myself to two. First, Money of Account, *i.e.*, the standard unit in which prices are measured—in Great Britain the £ sterling, in France the franc, in America the dollar. Secondly, Money in its widest sense, which includes Gold, Central Bank currency, Cheques, Bills of Exchange, Bank Deposits, and all instruments generally regarded as constituting a part of the whole volume of Credit. Money, in my paper, conforms to the second and more general definition, unless otherwise stated.

THE GOLD STANDARD.

I will assume the Gold Standard and submit the following bases for its operation:—

1. Money is related to a standard of value, namely Gold. The relation is not entirely automatic, but can be regulated within limits by the Central Bank of each nation—in this country the Bank of England.

2. The Central Bank, which should be the Bank of the Government, has virtually a monopoly or control of the currency issued and of the gold in the country.

3. There is a standard monetary unit (Money of Account) in England, the £ sterling, which is equated to a certain weight of gold. This weight of gold has a corresponding equivalent in terms of the Money of Account of other countries which are also on a Gold Standard—nearly all countries have now adopted the Gold Standard.

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It will be seen that the total amount of notes is issued against various assets. It is a fundamental feature that for every note issued above the amount of the Fiduciary Issue there shall be a corresponding amount of gold coin and bullion in the hands of the Bank of England. Some of these notes are kept in the Banking Department of the Bank of England and constitute the Bank's reserve. In other countries a certain percentage of gold must be maintained against notes issued.

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deposit upon which the customer can draw. Bills of exchange are drawn against goods or in connection with financial transactions and are discounted. They constitute a part of the volume of money. In these ways banks create money—in the aggregate bank deposits represent an enormous volume of credit. The authors of The Bank Charter Act of 1844, which substantially regulates the arrangements for the issue of notes, took great pains to limit the amount of notes issued, as I have shown earlier in this paper. But the amount of credit issued in other ways was left entirely to the discretion of bankers. At the same time, by the operation of the system as a whole, some measure of control exists over the amount of deposits bankers can place at the disposal of the public.

It can be said that in this country the volume of credit is related to gold. The amount of notes issued depends on the amount of gold held by the Bank of England, the amount of gold depends on the state of the foreign exchanges, the foreign exchanges are dependent on the state of trade and international price levels, international debts and international financial and security operations. Trading and security operations are largely effected through the joint stock banks, which are linked with the Bank of England by the Clearing Bankers' Accounts, through which the joint stock banks obtain notes. There is, therefore, a kind of circle commencing with gold and ending with gold. There is not, however, absolute centralised control over the amount of deposits created by the banks.

Three aspects of this system have been the subject of much discussion in recent years, namely :—

(*a*) The proportion of currency which ought to have a gold banking : in other words, could the Fiduciary Issue under any and under what circumstances, be increased ?

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The whole structure is based on confidence, backed up by a small proportion of gold : if that confidence is badly shaken, the results are serious in the extreme. I remember in the black week following the declaration of war, when finance and commerce were paralysed, an Incorporated Accountant said to me : "If this goes on, the day may come when you will be able to throw gold into the streets of London and it will be worthless." Gold is a symbol, widely respected, hoary with antiquity. The question is : "Can gold continue to meet satisfactorily the monetary needs of the world ?" The answer, as I understand expert opinion, is "Yes, if it is properly handled."

Prices.

Price Levels.

I want to emphasize the importance of the price of things and what are known as "Price Levels." Price levels are indicated by a series of index numbers. The construction of index numbers is a somewhat technical question, but we can form a reasonable idea of the meaning of a series of index numbers representing, say, wholesale prices, or the cost of living, or wages. Mr. J. M. Keynes is of opinion there is no satisfactory index of the purchasing power of money, a deficiency which he believes ought to be made good.

The problem in relation to prices is the manner in which the monetary and credit machine, which I have attempted to describe in outline, affects prices and the price levels. To what extent can and ought monetary policy to govern price levels ?

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The value of anything must be expressed in terms of something else : in practice that value, the price, is expressed in terms of money of account, *e.g.*, we say (though probably not from personal experience) that a Rolls Royce is worth £2,000, or that a Ford three years old (though we may not believe it) is worth a fiver. We do not say that 400 three-year-old Fords are worth one Rolls Royce.

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The quantity of goods produced in the aggregate
The amount of money available ;
The rate at which money available is turned over ;
The rate at which goods produced are turned over ;
The way in which money is employed, *e.g.*, is it placed on deposit or being invested for capital purposes, or in buying consumable things ?

Further, if the quantity of money is increased and used, and production remains the same, then prices tend to rise ; rising prices stimulate production. Similarly, if the quantity of money is decreased and not used so intensively, and production remains the same, then prices tend to fall : falling prices tend to decrease production

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As a provisional and general conclusion, it may be said that under normal conditions the working of the monetary and credit machine does affect price levels. I will not put it any stronger than that.

CHANGES IN PRICE LEVELS.

Now changes in price levels give rise to much difficulty and trouble. The necessity of the writing down of stocks at the end of 1930 is unhappily too familiar, and is a result of a severe decline in the price level. A manufacturer may have bought his raw material at the end of 1929. During 1930 the price of the raw material and of the finished product may have fallen. So that at the end of 1930 he had to sell his finished product at a low price, made from raw material purchased at a comparatively high price. In 1920, when prices had risen rapidly, the position was reversed and large profits were shown. But, as we know, this was rather a short-lived glory. There is a "time factor" or "time lag" in these movements.

When we come to consider prices in relation to wages the difficulty is acute. We know the difference between money wages and real wages. The value of money wages depends on what the money will buy, which depends on the price level. Now human nature, being what it is, much prefers rises in wages, salaries, professional fees and profits to such advantages as may be gained from a fall in prices, provided that such increases are not accompanied by an altogether disproportionate rise in prices. Suppose a bargee skipper goes to draw his wages at the end of the week and his guv'nor, the barge owner, says to him, "George, I am very sorry: but just look at this graph (they call it a smoothed curve) showing the disharmony between the fall in prices, the fall in carrying charges and the level of wages. Clearly wages are too high. I am afraid wages will have to be dropped five shillings next week. Just go and talk it over with your mate and come and see me next week." Bargee Skipper says, "Very much obliged to you, sir. I thoroughly understand the graph; I will take it away with me and discuss it with the crew." Then he goes away to the nearest pub to meet his mate and the crew, where, over a pint of beer (which seems unusually expensive), they all say, "We quite understand and are very much obliged to the guv'nor for his consideration and for the graph and to the whole barge-owning fraternity for their kindness in showing us how well-off we have become." I will not attempt the more picturesque and emphatic terms of such a discussion. We all know that, with a five bob a week rise they would all enjoy the beer much better, whether dearer or cheaper—but preferably cheaper.

If you were asked to advise a client on the ascertained results of his last year's trading or manufacturing, you would consider how his turnover and the selling price of his goods could be increased, how costs could be reduced. Your mind would unconsciously be working at the practical side of this price level problem. It has become a modern bogey, and it is hardly surprising.

These difficulties are accentuated by the fact that changes in the prices of raw materials, of finished goods, of wages, salaries, profits, professional fees, do not take place together. It takes time for a change in one set of price levels—say, in raw materials—to work itself out into the other price levels. We can realise that by the illustration of writing down stocks at the end of the year, owing to a drop of market prices. It also takes time for a moderate degree of monetary expansion to affect the price levels.

PRICE LEVELS AND MONEY.

From these arguments we may make the following statements:—

The price of anything is its value in terms of money.

The prices of groups of things, wages, rents, may be expressed in terms of a price level.

Price is the touchstone of many practical business and economic problems.

Prices in terms of money on a Gold Standard basis are also in terms of gold.

If price levels are low then gold is dear: more things have to be given for the same number of £1 notes than before; gold can be purchased with that number of £1 notes. If price levels are high then, conversely, gold is cheap. Prices having fallen rapidly, we say that the price of gold has risen.

If money increases at a much more rapid rate than production, then inflation arises. If money decreases much more rapidly than production, then deflation arises. These should not be taken as absolute or final statements, but as statements of well-marked tendencies, verified by past experience.

It is in the light of these conclusions we may say that monetary policy directed by the Central Banks can affect price levels within limits and under certain conditions, and thereby stimulate or retard production. This monetary policy, as we have seen, places restraints and limitations on the expansion and contraction of the volume of money.

Trade and Industry.

The practical relation of trade and industry with prices is obvious, *e.g.*, manufacturers may be heard to say, "Raw material is dear, but we are getting a bad price for our stuff." Much has been written and said in regard to the control of price levels by monetary policy. I do not think a final answer can be given to that question. Considerable variation of opinion exists, but there is a substantial measure of agreement that the object of monetary policy should be to secure as far as possible stable price levels. We must differentiate between variations in price levels over a comparatively short period and major variations over a long period of years.

If monetary policy can control price levels, why, it is argued, has monetary policy failed to avoid the great depression or how can monetary policy remedy this state of affairs? Is the slump a monetary crisis or a production crisis, or a reaction of one on the other?

The discussion appears to fall under three headings:—

(1) An analysis of the causes, financial and industrial, which have led up to the present slump, described as the greatest in modern history.

(2) Can monetary policy remedy or mitigate the present serious world and national depression?

(3) The formulation of ideas and policy to secure more stable economic conditions in future and lessen, though we cannot hope to eliminate, the serious ups and downs of the trade cycle.

THE CAUSES OF THE PRESENT DEPRESSION.

I have examined the views of a number of authorities upon the present situation. Distinguished opinion is by no means unanimous. On the whole, there has recently been some reaction from the view, somewhat widely held, that monetary causes were dominant in causing the present depression. I will endeavour to summarise a few of these opinions.

In his most recent address, Sir Henry Strakosch, who is one of the leading authorities on the gold question,

has stated that in his view monetary causes had been pre-eminently responsible for the fall in commodity prices, and he claimed there had not been any general over-production in recent years. He considered it vitally important that the purchasing power of gold as the standard of value should be maintained stable within reasonable limits, and this, he considered, was practicable.

Mr. Reginald McKenna, in his speech at the last general meeting of the Midland Bank, believed it was undeniable that the price level is in the control of the Central Bank. He also laid emphasis on the rate at which money circulated and the use to which money was put.

Lord d'Abernon, in unmeasured terms, attributes the depression to the variation in the price of gold during the last five years and its effect upon prices. He is not prepared to accept the view that it is a production crisis.

Sir Harry Goschen, chairman of the National Provincial Bank, on the other hand, considered that too much importance was being attached to the concentration of the greater part of the world's stock of gold in one or two hands. Sir Harry laid substantially greater stress upon the problem from the production point of view. He argued that production expanded at an enormous rate to meet the abnormal requirements of the war and the immediately following post-war years, that the increased output could not be absorbed by the world's population and that a great deal of redundant and obsolete capital had thereby been created.

Sir Arthur Salter, who at one time was head of the economic section of the League of Nations, wrote in *The Times* as follows: "The notion that, in the nature of things, there is a fixed limit to human needs, is a mere delusion, and will be until the last Hottentot lives like a millionaire. It is not human desires that set the limit to consumption, but purchasing capacity. With a world system properly functioning, this should *in toto* approximate to the world's productive capacity."

Mr. Arthur Michael Samuel's diagnosis is that the fall in prices has helped to cause disequilibrium in the distribution of gold and that equilibrium will be restored when would-be borrowers have proved to lenders they are credit worthy.

I couple these views with the paper recently read by Dr. Coates and the discussion upon it which has been published in the *Incorporated Accountants' Journal* to-day. In the light of this variety of opinion it seems clear to me that the international monetary system has not worked as it should, also that production in certain directions and under the conditions existing at the time has been excessive. The reasons are not hard to seek. It was hardly to be expected that a war in which practically the whole of the civilised world was engaged with destruction on an undreamed-of scale could produce anything but the most serious consequences. The complacent assumption that we had come to a new world and a new and improved state of things was much too easily held.

I am impressed by the enormous economic disturbance which the war debts and international reparations settlements have involved. The annual amount of the remittances agreed upon in effect have represented a gratuitous transfer from one country to another of goods and services without a corresponding exchange. The greatest creditor country has been little disposed to accept payments in goods and services, and, in fact, has raised tariff barriers which have made trade extremely difficult. That attitude can be understood when a genuine, though exaggerated fear existed that a large importation of European goods would prove disastrous to American industry. It is true that at present Great Britain has practically squared her account in regard to war debts and reparations—receipts approximately equal payments. Apart, however, from the book-keeping, the creation of large credits and their transfer from one country to another seems to introduce an enormous element of friction both in regard to production and monetary movements. As a result large payments to America have been made in gold and at the present time the unprecedented position has arisen where practically every note issued in the United States has an equivalent amount of gold in the bankers' vaults. France has also made large acquisitions in gold through having over a period of years created in London a large volume of deposits which can be recalled at short notice. It must be realised that the gold transfers represent actual payments to which the receiving countries are entitled.

On the side of production, opinion has crystallised in recent months in condemning the creation of pools and artificial restrictions in such commodities as wheat, rubber, and others. These steps were taken to bolster up prices. Instead of prices rising, large quantities of commodities have had to be precipitated on the market. No operation of a monetary character could be expected to withstand this avalanche.

Finally, the boom, particularly in the United States and at home, in 1929, which at best could be described as misplaced financial judgment on the part of a large section of the population, brought with it disastrous and ill-starred company flotations. This has not only affected most seriously the monetary position, but has caused a widespread lack of confidence from which we are now suffering.

The attention given to the causes of depression are not merely to apportion blame or to indulge in captious criticism, despite attempts in one or two directions to do so; but I believe the purpose is rather to trace the causes, with a view to alleviating the present situation and, secondly, the formulation of better productive and monetary policy in future.

Criticism has been directed to the time and circumstances under which Great Britain returned to the gold standard. It is fair to say that this, over a period of about five years, led to a gradual fall in prices, but it would be quite wrong to say that the downward rush of prices in the last fifteen months was simply due to the return of the gold standard.

The action of monetary control may be compared to the reins in the hands of a driver, the horse representing production and the reins monetary policy. The horse ought to be driven at a reasonable speed. So long as he is doing so, by control of the reins a skilful driver can make the horse go slower, or faster. If, however, the horse begins to bolt (*i.e.*, if production gets out of hand), it is not possible to pull him up by the reins alone. The horse is bound to go on until he is exhausted.

THE PRESENT POSITION.

To what extent can these considerations offer any solution to the present position? It is simply paradoxical that the world should be in a state of depression and yet commodities of all kinds were never so abundant. The horse is exhausted and the reins are slack, and Dr. Sprague and Mr. Henderson, in commenting upon Dr. Coates' paper, considered that monetary policy could not perform a miracle, although it would help so far as it could.

The mal-distribution of gold, upon which credit depends, must have an adverse effect when remedies are sought. If France and America would consider the question of

foreign loans, based upon their large gold holdings, some relief could be found. Confidence is essential if such a policy is to be carried out. This is largely a matter of politics and the maintenance of sound financial principles by would-be borrowers. There are two very disagreeable features in the situation. One relates to the level of wages, both real and monetary, *i.e.*, how much is paid in wages and what wages will purchase. The other is the great burden of national debt and other long-term fixed interest investments. The annual payments required are the same now as they were, say, ten years ago, when the price levels were much higher. This involves a great burden on the debtors and, it must be added, considerable advantage to the creditors. This is one of the reasons that makes the maintenance of a stable price level so vital.

The President of the Society, Mr. Henry Morgan, has recently drawn attention in his speeches to these very difficult features, and in his view, the remedy may be somewhat painful.

Some relief, however, may be afforded if there is a rise in the price level. Those in control of monetary policy are doubtless considering whether it would be desirable to keep prices stable at their present level or to wait until, as it is hoped, the swing of the trade pendulum will bring an upward movement, when control may again be exercised. The fact is, we are passing through a period of severe adjustment, after a number of things and schemes have gone wrong. Economists call them "disequilibria." These disequilibria are endeavouring to work themselves out. The trade cycle is a phenomenon which economists have recognised for many years, though insufficient is known about its quantitative operation.

There is a large volume of credit awaiting investments. Savings have overtaken investment and confidence is required both on the part of borrowers and lenders to utilise satisfactorily the amount of credit available. America is bulging with gold, but gold is not saving her from a depression at least as severe as any in our experience. For the development of this idea in regard to the use of credit I would refer you to the lecture by Dr. Coates, in which he deals with the question more thoroughly.

Personally, I am not at all clear whether the disequilibrium between production and purchasing power should be remedied by expenditure upon consumable commodities or upon investment in capital goods. The spending idea seems to me to be fraught with great danger, but to use a simile, the selling department as a whole must co-operate with the financial and production departments.

POSSIBILITIES OF FUTURE POLICY.

International co-operation in gold control and credit is a desirable goal upon which all writers and financiers have concentrated. The volume of credit required is one thing, and its use is another, and if one may say so fairly, banking policy will probably concern itself more intensively in future with the use to which borrowers put money as well as security offered, and it is to be hoped borrowers will be more circumspect. The monetary needs of the world must increase as time goes on, and so long as gold is used as a basis, its distribution and more economical use for monetary purposes will call for co-operation and consideration.

Over a long period of years there has been a marked consilience between the increase in gold production and prices.

This subject has been dealt with in a recent report issued by one of the Committees of the League of Nations. Their former fears of a gold shortage have been somewhat mitigated by the fall in prices: the volume of gold required to support the lower level is less. Reform in management as much as increase in quantity is the keynote of their deliberations.

Suggestions that the gold standard should be abandoned seem rather futile. The greater part of the civilised world has committed itself to the gold standard, but the gold standard in the last seven years has scarcely had a fair chance.

As criticism has been directed from time to time against banking policy, it may be well to emphasise

(1) That we have come through the greatest slump in modern history without so much as a shadow of doubt being cast upon the stability and integrity of the banks, and

(2) That Great Britain has met her obligations and paid 20s. in the £.

I am content to believe that the difficulties and experience of the last decade will not be forgotten. Political stability and monetary co-operation offer the best hope for a stricken world.

Discussion.

The CHAIRMAN: I should like to say that I have been deeply interested in this subject, and have listened with the greatest possible interest and admiration to Mr. Garrett's paper. I think he has given one of the most concise summaries of the whole position that I have ever listened to. Although in regard to money and trade we have a shortage, we have no shortage of authorities upon the gold standard and the way it works. Mr. Garrett gave you, towards the end of his paper, a nice little summary of views, all running definitely against each other, so that you and I can judge whether Mr. Reginald McKenna is right, or Sir Harry Goschen, or Mr. Keynes, or Sir Otto Niemeyer, the last of whom he did not quote. We are in a very difficult position. I believe all who study the problem must form an opinion, but it puts us in the dubious position of having to decide for ourselves between the authorities. Now I think Mr. Garrett, in the short space of time that he has occupied, has given us some admirable material for forming our judgment upon this very important question. I myself was much interested in what he said about prices—the value of index numbers—and, in regard to gold money, about what is known as the quantity theory. When he was speaking of inflation, I remembered meeting a German professor, who told me that when inflation was at its very worst he used to receive his salary three times a day. He would get through his lecture as quickly as possible, mount his bicycle and pedal for all he was worth to obtain his salary and spend it before his money had undergone further depreciation. That was done in order to avoid the rapid inflation which was going on, moment by moment. Nobody could live under conditions of that sort. But we have to remember that inflation in Germany really began in a political effort, not in an economic effort. In regard to prices in general, I believe it would not be a bad thing if the central banks could start something which would stop or ease the sluggishness of credit. Sir Henry Strakosch's point, which I think is interesting, is that there is a real demand for the exchange of goods and that the real trouble arises because changes in the value of the medium of exchange stand between exchange of commodities. That is not universally true, but it is the explanation of many of our present economic ills. As Mr. Garrett said in regard to production, there are innumerable cases of over production. Boots may be one of them, motor cars in America was another. We have to face up to that, but in regard to the prime commodities of life, with perhaps the exception of wheat, I myself think there is not more cotton, more rubber, more

copper and more tin now produced and in stock than the world could really use if it had the means of using it, and what we want to discover is that something which will give us the ability to move these goods which can be put into useful articles and made to adorn, or, at any rate, make more happy, lives which at the present time need them. That is the whole problem of monetary policy. How it can be done is another question. I should like to say one word about the ability of the banks to create credit. That is really conditioned by one thing more than another, and that is that the joint stock banks in principle and in practice always have on deposit in the Bank of England, or in their own tills, cash equal to at least 10 per cent. of their total of deposits, so that there must come a period when they must cease to create deposits, because creation of deposits will always be conditioned by what cash they have in hand. As a matter of fact, that limit has been operative. I think on the present gold basis we have reached pretty nearly the limit of credit facilities in this country.

Mr. W. J. BACK: First of all, I would like to say how much I have appreciated the paper to which we have listened, and I should like to underline the remarks Mr. Garrett made about the possibility of over production in particular lines of commodities. As a matter of fact, this has received less attention than it ought to have done from the professional economists. Mr. J. A. Hobson, whose name is known to all students, holds, I think, that there could not possibly be general over production, because whatever is produced in goods is represented by payment for materials or services, and therefore exists as purchasing power on the part of somebody—a kind of double entry in which production always equals potential demand. That overlooks altogether the fact which Mr. Garrett emphasised, that there might be surplus production in particular lines, such as boots, accumulating as stocks which represent frozen supplies, whilst there was under production in other lines. The matter, therefore, does not clear itself so easily as Mr. Hobson suggests. I suppose Mr. Garrett has not any means to suggest to us by which a particular over production could be prevented? You might have an army of officials determining how much each should produce on the basis, say, of a still-to-be-invented index number. But this is what I wanted more particularly to ask Mr. Garrett: Is it not possible that the misallocation of effort has been far more affected by debt settlements, indemnities, reparations and other war settlement machinery, since the end of the war, than at first sight appears? Of course, there was a war before the last one—the Franco-German War, and the Germans imposed certain indemnities upon the French. Mr. Garrett will be able to tell us whether it is not true that the modern French productive capacity grew out of the effort to produce those indemnities, and whether a tremendous amount of unemployment was not thereby created in Germany. If that is so, it may be "more blessed to give than to receive"—indemnities, as well as other things.

A STUDENT: Referring to the Bank statement which has been circulated this evening showing the amount of the fiduciary issue to be £260 millions, has that figure ever been increased, and, if so, what steps are taken now to prevent it falling below the present figure?

The CHAIRMAN: The £260 millions was really fixed by the Currency Act at the time it was decided to pass over the issue of Treasury Notes to the Bank of England. The Currency Committee recommended that the fiduciary issue should be fixed, and it was fixed by Act of Parliament at £260 millions. Immediately the Bank of England took over the Treasury Note issue, that figure was put into the Bank statement as the existing limit of the fiduciary issue, and it can only be altered by consultation between the Bank of England and the Treasury.

Mr. HENRY MORGAN (President of the Society of Incorporated Accountants and Auditors): I expected that there would be so many speakers on this paper delivered by Mr. Garrett—upon which I should like to add my congratulations to those already expressed—that I did not think for a moment that I should be called upon, or, at any rate, given the opportunity of addressing this meeting. They say that money is the root of all evil. That may not be entirely true, but I think there is no doubt at all that money is the cause of many of the difficulties from which we are suffering at the present time. It is a necessary evil. We are bound to have a medium of exchange, but the constant alteration in its value is increasing the many difficult problems with which we have to deal. Here, in a time of depression, when industry is feeling excessively the burdens of taxation, we have this anomalous position, that, as prices fall, the real burden of taxation is increasing in an inverse ratio, because the real burden is the amount of the goods and services represented by the purchasing power of the money amount of the tax. And the same way with wages. We are suffering to-day from a rate of wages greatly in excess of those paid by our principal competitors. With the increasing value of money and the fall in the prices of commodities and services, wages are really increasing in value. The gold standard is apparently the most reliable and the best one we could have. At its best it is unsatisfactory, and yet it is, as I say, the only measure that is really convenient to countries throughout the world. I would like to re-echo what our Chairman has said in congratulating Mr. Garrett upon his paper.

Sir STEPHEN KILLIK: I have been asked to propose a vote of thanks to the Lecturer, and this I do with very great pleasure. I am glad that I have not been asked to criticise the lecture, because, although criticism is said to consist in telling somebody how to do something that you cannot do yourself, I find it even difficult to go to that length on the subject in regard to which Mr. Garrett has given us his interesting and illuminating address. Mr. Garrett said that he proposed to deal with the matter from an elementary point of view, for which I was profoundly thankful, and I believed him, because he is a truthful man. As a matter of fact, it is not difficult to speak the truth; the difficulty is to get it believed. I remember the late Lord Curzon, in one of the last speeches he made before his lamented death, in referring to this very subject, told us that when addressing an audience many years ago, he said: "I remember when I was a youngster getting the biggest thrashing I ever received in my life for telling what was the absolute truth," when someone in the audience called out, "My word—they cured you." (Laughter.) You must not think from this that I am suggesting that Mr. Garrett is not telling the truth. I believe he is, and in any case I am not in a position to question it. He has given us the opinions of various well known economists who flatly contradict one another, and in these circumstances I do not feel that it is necessary to apologise for not expressing my own opinion as to the best method of dealing with these monetary questions. I am sure you have all enjoyed the lecture, and that it will provide you with food for thought for some time to come.

The vote of thanks was seconded by Mr. COLESWORTHY, and carried, and on the motion of Mr. THOMAS KEENS, a cordial vote of thanks was accorded to Mr. Wade for presiding.

Incorporated Accountants' Examinations.

The next Incorporated Accountants' examinations will be held on November 2nd, 3rd, 4th and 5th, 1931, in London, Manchester, Cardiff, Leeds, Glasgow, Dublin, Belfast, Cape Town, Johannesburg and Durban.

Preliminary examination,		November 2nd and 3rd, 1931.
Intermediate	,,	November 4th and 5th, 1931.
Final	,,	November 3rd, 4th & 5th, 1931.

Applications to sit for the examinations must be made on the appropriate forms on or before September 29th, 1931.

INTERNATIONAL ILLUMINATION CONGRESS.

Flood Lighting of Incorporated Accountants' Hall.

Incorporated Accountants' Hall will be one of the London buildings to be flood lighted between 9 p.m. and midnight from September 1st to 26th, 1931, on the occasion of the International Illumination Congress, and the meetings of the International Commission on Illumination, the former of which will be held in London, Glasgow, Edinburgh, Sheffield and Birmingham from September 1st to 12th, and the latter in Cambridge from September 13th to 19th.

In addition to granting permission for the flood lighting, the Council of the Society of Incorporated Accountants and Auditors has invited the delegates to visit the Hall on the mornings of September 1st and 3rd, 1931, when the Vice-President (Mr. E. Castleton Elliott) will receive the visitors and Mr. J. R. W. Alexander will describe the history and architecture of the building.

The flood lighting of Incorporated Accountants' Hall will differ from the illumination of the other London buildings, in that a daylight effect will be created, and it will be interesting to compare this with the flood lighting of other buildings near the Victoria Embankment (Somerset House, County Hall and Big Ben) and with the flower beds in St. James's Park, which are being flood lighted by gas.

The flood lighting of Incorporated Accountants' Hall has been made possible by the co-operation and assistance of Mr. J. R. W. Alexander (who initiated the proposal), Belshaw & Co., Limited (Electrical Engineers to the Society, who are installing and maintaining the apparatus), Restlight Limited (who are supplying the flood lamps), and the Metropolitan Electric Supply Company, Limited (who are providing the current).

Incorporated Accountants are cordially invited to inspect the exterior of the Hall during the period it is flood lighted, since it is not likely that it will again be possible to illuminate the building in this manner. It is hoped to publish a picture of the Hall as flood lighted in our next issue.

Constitution of the International Illumination Commission.

According to its Statutes, the objects of the International Illumination Commission are to provide an international forum for and to promote the study of all matters relating to the science and art of illumination; to secure the interchange of illumination information between different countries; and to agree upon international recommendations relative to illumination. Any country desiring to affiliate itself with the Commission has to form a representative National Illumination Committee, of which there may only be one for each country. There are at present thirteen National Committees, each of which may send any number of delegates to a session of the Commission.

The President of the International Illumination Congress is Mr. Clifford C. Paterson, while Sir Francis Goodenough is Hon. Treasurer of the Congress and Chairman of the Publicity Committee. The General Council of the Congress includes representatives from the Government Departments, the National Gas Organisations, and certain technical and professional bodies and associations of supply undertakings and manufacturers. One hundred and fifty papers will be presented and discussed by delegates from all countries during the Congress.

Mr. Clifford C. Paterson (President of the Institution of Electrical Engineers and an Associate of the Institution of Gas Engineers) and Mr. Robert Watson are Vice-Chairmen of the National Committee and are the two representatives of Britain on the Executive Committee of the International Commission on Illumination.

London Social Programme.

The London Programme of the International Illumination Congress includes the official luncheon given by the Gas Light and Coke Company and the London Electric Supply Undertakings at the Savoy Hotel on September 1st, and a banquet at the Dorchester Hotel on September 2nd.

In addition to drives and visits to many places of interest in London, a tour of the Port of London will be made by boat. The Beckton Gas Works, Fuel Research Station, Deptford Electric Power Station, National Physical Laboratory, and Croydon Aerodrome will be inspected, in addition to the Research and Training Section at Watson House and the Showrooms of the Gas Light and Coke Company, the E.L.M.A. Lighting Service Bureau, and the Research Laboratory of the General Electric Company, Limited, at Wembley. Buckingham Palace, the National Gallery, Big Ben, Somerset House, County Hall, Incorporated Accountants' Hall, and the Flower Beds in St. James's Park will be flood lighted throughout September.

The success of the "London by Night" tour arranged by the Institution of Gas Engineers on the occasion of the First International Gas Conference in June, 1931, has encouraged the organisers of the International Illumination Congress to arrange a similar trip, which commences from the Dorchester Hotel after the banquet on September 2nd, and embraces the street, store, and flood lighting of Central London.

Provincial Social Programme.

The tour of the Provincial cities will be made by a special train which has been made available for the delegates throughout the Congress. In Glasgow there will be a reception by the Lord Provost and Council in the City Chambers and a boat excursion on the Firth of Clyde. The annual meeting of the Association of Public Lighting Engineers will be held at the University of Edinburgh in conjunction with the Technical Sessions of the Congress, and the Lord Provost and Council will give a reception and dance in the Edinburgh College of Arts. In Sheffield the Lord Mayor and City Corporation and the Sheffield Gas Company will entertain the delegates to luncheon, the Technical Sessions being held in Buxton, where the delegates will stay. In Birmingham the Lord Mayor and Council will hold a reception and dance, and there will be a motor tour of the Shakespeare country. In Cambridge, where the Commission meetings take place, the various colleges will be inspected, and there will be a demonstration of automobile lighting with the co-operation of the Royal Automobile Club.

Scottish Notes.

(FROM OUR CORRESPONDENT.)

Incorporated Accountants' Golf Club.

A meeting of this club was held on 22nd ulto. at the Darley Golf Club's course at Troon, where an enjoyable game was participated in by a number of the members. Another and concluding game for the Dunlop Cup will be held in September, of which due notice will be given.

A Preference Challenged.

An important point in bankruptcy law was decided by Lord Mackay in an action by the Trustee on a sequestrated estate against the British Linen Bank. The action was for payment of £7,300. The debtor, Harold Whatmough, a motor engineer and 'bus proprietor, who had been in business since 1922, found himself in financial difficulties in 1929. On February 27th, 1930, he signed a trust deed in favour of an accountant for behoof of his creditors. On March 7th the creditors instructed the trustee to apply for sequestration, which was granted, and the official Act and Warrant in favour of the trustee in the sequestration dated March 31st, 1930. The transaction under challenge took place on February 18th, 1930, and was, therefore, a transaction within 60 days of notour bankruptcy.

The debtor had sold his business and received a crossed cheque from his solicitors for the price of his business, which he endorsed over to the bank, who credited his overdrawn account with the amount, thereby discharging Whatmough of £7,300 of his remaining overdraft.

The claim of the trustee on behalf of the unsatisfied creditors was rested (*a*) on the Act of 1696, c. 5, and (*b*) on fraudulent preference in bankruptcy at common law. The case was defended by the bank as an important question for them, and also for the practice of bankers in general. Lord Mackay found that the transaction was null and void, and decerned for payment of the sums in question to the pursuer, reserving to the defenders their claim to a ranking in the sequestration. His Lordship was clearly of opinion that in matters of this sort the challengeability of such a transaction was seldom resolvable by a mere consideration of the bare form of the proceedings, such as the ordinary receipt of lodgements with the bank. The law was settled that the Court would look to both the substance and the form of what was done.

In dealing with his conclusions on the evidence, his Lordship said he found that the transference of value on February 18th was to the knowledge of Whatmough (*a*) in prejudice of his other creditors, and (*b*) in preference to the Bank over those creditors. It had, in fact, resulted in their deprivation of something like 7s. in the £1. His Lordship understood the Bank to argue that in a question with a bank or financier who, they said, were really "keeping the thing running for the benefit of all the creditors," there was nothing to prevent them taking a payment of this sort with their eyes open and in full knowledge. His Lordship rejected that contention. Alternatively, it was argued that in order to enable recoupment, the recipient creditor must be tainted with actual fraud; he must in the full ordinary sense be party or conniver at the fraud. If the first ground was not sufficient his Lordship was prepared to hold that there was enough to prove fraudulent preference by the bankrupt at common law, together with connivance of the defenders in a sense which his Lordship explained, and that the transaction must be reduced.

On the summary question whether a payment in cash would be saved by proof of a course of trade, even though it were proved to be in the fullest degree fraudulent, his opinion would be that that was not the law of Scotland.

Owners' Rates—Deduction from Profits.

An important income tax case affecting Scottish traders was decided by the House of Lords in March last. The question was as to the admissibility of allowing deduction from profits of owners' rates already deducted in assessment under Schedule A. The relevant clauses in the Income Tax Act, 1918, are Schedule A to V, Rule 4, Schedule D, Cases I and II, Rules 8 (*a*) and 5.

The case was that of the *Inland Revenue* v. *Scottish Central Electric Power Company*, on an appeal by the Inland Revenue against a decision of the First Division of the Court of Session, and was heard before Lord Hailsham, Lord Warrington of Clyffe, Lord Atkin, Lord Thankerton and Lord Macmillan on June 20th, 23rd and 24th, 1930.

In delivering judgment on the appeal, the House of Lords (Lord Atkin dissenting) sustained the appeal, holding (reversing the judgment of the First Division) that the rates paid by the company as owner of its mills and of the land on which the mills were erected (which had already been deducted by the company in computing its profits assessable to income tax under Schedule A) could not be deducted in the computation of its profits assessable to income tax under Schedule D in respect that under Rule 3 of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918, no sum could be deducted other than money "wholly and exclusively laid out or expended for the purposes of the trade," and that rates paid by the company in its character of landlord were not an outlay of the company in its character of trader, and accordingly did not fall within the category of permitted deductions.

Notes on Legal Cases.

INSOLVENCY.

Blakey v. Pendlebury's Trustees.

Assigning Benefit of Hire-purchase Agreements.

A trader carried on the business of hiring out pianos by means of hire-purchase agreements under which the hirer agreed to pay the trader a monthly sum in advance so long as the hiring agreement continued. On the payment of a specified amount in these instalments the hirer became the owner of the piano. The trader agreed to assign the benefit of these agreements but no notice of the assignment was given until after he was adjudicated a bankrupt.

It was held that the monthly sums which, after the commencement of the bankruptcy, had or would become payable in advance under the hire-purchase agreements if the hirer continued the hiring were debts growing due to the bankrupt in the course of his trade or business within sect. 38 (*c*) of the Bankruptcy Act, 1914, and were therefore properly divisible among the bankrupt's creditors as being things in action "at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner" within that section.

(C.A.; (1931) W.N., 156.)

EXECUTORSHIP LAW AND TRUSTS.

In re Veale.

"*Free and Clear of all Taxes and Incumbrances.*"

Bennett (J.) held that a will giving a rentcharge free and clear of all taxes and incumbrances whatsoever, does not entitle the beneficiary to the rentcharge free of income tax and sur tax.

(Ch.; (1931) L.J.N., 442.)

MISCELLANEOUS.

Mills' Conduit Investments, Limited, v. Denholm.

Harsh and Unconscionable Transaction.

By sect. 10 of the Moneylenders Act, 1927, where in any proceedings in respect of money lent by a moneylender it is found that the interest charged exceeds the rate of 48 per cent. per annum, the Court shall, unless the contrary is proved, presume that the interest charged is excessive and that the transaction is harsh and unconscionable.

It was held, in a case where the interest charged exceeded 48 per cent., and the defendant consented to judgment, that such consent did not relieve the Court of the duty of enforcing the presumption in the absence of proof to the contrary thereof, and that the Court was not entitled by reason merely of such consent to enter judgment in accordance therewith.

(C.A.; (1931) W.N., 167.)

Royal Bank of Scotland v. Skinner.

Customer and Overdraft.

A law agent opened a banking account on behalf of a disclosed client, the account being designed to carry on a business belonging to the client. The law agent kept the pass book and had general control of the account. The bank allowed the account to be overdrawn.

The Court of Session held that the law agent was not liable to the bank for the overdraft.

(S.C.; (1931) S.L.T., 382.)

REVENUE.

Merrifield v. Wallpaper Manufacturers, Limited.

Separate Sources of Income.

A number of 5 per cent. National War Bonds, 1928 (third series), were on December 1st, 1924, converted into 5 per cent. War Loan Stock, 1929-47. The holder in the following year purchased additional 5 per cent. War Loan Stock, 1929-47. Both the 5 per cent. National War Bonds, 1928, and the 5 per cent. War Loan Stock, 1929-47, were securities issued under the War Loan Acts. A question arose whether they were of the same class or source for the purposes of Rules 1 and 2 applicable to Case III of Schedule D of the Income Tax Act. The holder contended that they were the same source, and that therefore the assessment for the year in question should be computed on the basis of the income arising within the year preceding the year of assessment. The Crown contended that the income arising from 5 per cent. National War Bonds and 5 per cent. War Loan Stock was income arising from different sources, and that therefore the assessment for the year in question ought to be computed on the income of the year of assessment.

It was held as the National War Bonds and the War Loan Stock were securities issued under the War Loan Acts, 1914 to 1917, the interest arising from those securities arose from the same source and ought not to be split up for the purpose of charging income tax.

(K.B.; (1931) 2 K.B., 143.)

Anglo-Persian Oil Company, Limited, v. Dale.

Payment of Compensation for Termination of Agency.

A company paid to its agents the sum of £300,000 as part of an agreement to terminate a contract of agency. The sum was treated by the company in its books as a revenue payment, and was charged to revenue in instalments of £60,000 for each of the next five years. Upon a claim by the Crown that these sums were not permissible deductions from the company's profits for the purpose of ascertaining its liability to income tax, the Special Commissioners supported that view, but Rowlatt (J.) reversed their decision, holding that the company was entitled to deduct them.

It was held by the Court of Appeal (1) that the question was not a pure question of fact upon which the finding of the Special Commissioners would be binding; (2) that the company, by ridding itself of the agency, was not enlarging its operations nor improving its goodwill. It was not bringing into existence an asset or an advantage for the enduring benefit of a trade. It was making payments in lieu of the payments which would, if the agreement had not been made, have been paid to the agents as commission. The payments were analogous to payments which might, in the ordinary course of business, have been made for the cancellation of a contract to supply the company's products, and they were, therefore, payments attributable not to fixed but to circulating capital, and so might properly be debited to revenue account.

(C.A.; (1931) 47 T.L.R., 487.)

Anderton & Halstead, Limited, v. Birrell.

"Discovery" by Surveyor.

The allowance by an Inspector of Taxes of a debt as bad for purposes of the creditor's assessment to income tax under Schedule D does not bind the Crown contractually; nor is an assessment not appealed against conclusive against the surveyor as it would be if an appeal against the assessment had been determined (though, *semble*, such determination would not preclude an additional assessment). But in order to justify an additional assessment there must be a "discovery" by the surveyor that properties or profits chargeable to tax have been omitted.

"Discovery" does not mean a mere change of opinion, but the ascertainment of facts which, if they had been known when the first assessment was made, would have increased it. What the statute requires is not a prophecy to be judged by after events, but an estimate of the value *de præsenti* of the debt for a profit and loss account.

(K.B.; (1931) 47 T.L.R., 528.)

Thompson v. Trust and Loan Company of Canada.

Deduction of Tax from Coupon Interest.

A financial trust company purchased Treasury bonds cum coupon and simultaneously sold the same amount ex coupon. They cashed the coupons next to be paid, receiving the interest due, less income tax, which was deducted under Schedule C.

It was held that the company were not bound to bring the balance of interest into account as a profit or gain taxable under Schedule D.

(K.B.; (1931) 47 T.L.R., 525.)

Forth Conservancy Board v. Commissioners of Inland Revenue.

Income Tax on Shipping Dues.

The appellant board was constituted by the Forth Conservancy Order Confirmation Act, 1921, for the purpose of regulating and improving the navigation of the upper portion of the Firth of Forth. Under that Act the board were authorised to levy shipping dues from the owners of ships using the River Forth, and those dues constituted the sole revenue of the board. The balance of the dues, after providing for all expenses, was subject to the express provision that it should be applicable to such purposes and in such manner for the purpose of the undertaking as the board might determine.

It was held by the House of Lords that the board was rightly assessed to income tax under Case VI of Schedule D in respect of such balance, as it constituted "profits or gains" and the purpose to which it was applied could not affect the liability to tax.

(H.L.; (1931) 47 T.L.R., 429.)

Keren Kayemeth le Jisroel, Limited, v. Commissioners of Inland Revenue.

Charity.

The Court of Appeal affirmed the decision of Rowlatt (J.) (see *Incorporated Accountants' Journal*, April, 1931, p. 290), and held that a Zionist association formed for the purpose of settling Jews in the Holy Land was not a charity and therefore not exempt from income tax.

(C.A.; (1931) 47 T.L.R., 561.)

Lord Glanely v. Wightman.

Stud Farm.

The appellant owned a stud farm and was assessed to income tax under Schedule B in respect of the occupation of the land. He was also assessed under Schedule D in respect of fees paid for the services of his stallions.

It was held that, as there was a practice of earning the fees, this constituted a trade separately assessable under Schedule D, and that it was not to be treated as a part of the composite undertaking of breeding and racing horses.

(K.B.; (1931) 47 T.L.R., 462.)

Institution of Civil Engineers v. Commissioners of Inland Revenue.

Charity.

The Court of Appeal held that the Institution of Civil Engineers is in law a charity, and therefore is exempt from income tax.

(1931, 47 T.L.R., 466.)

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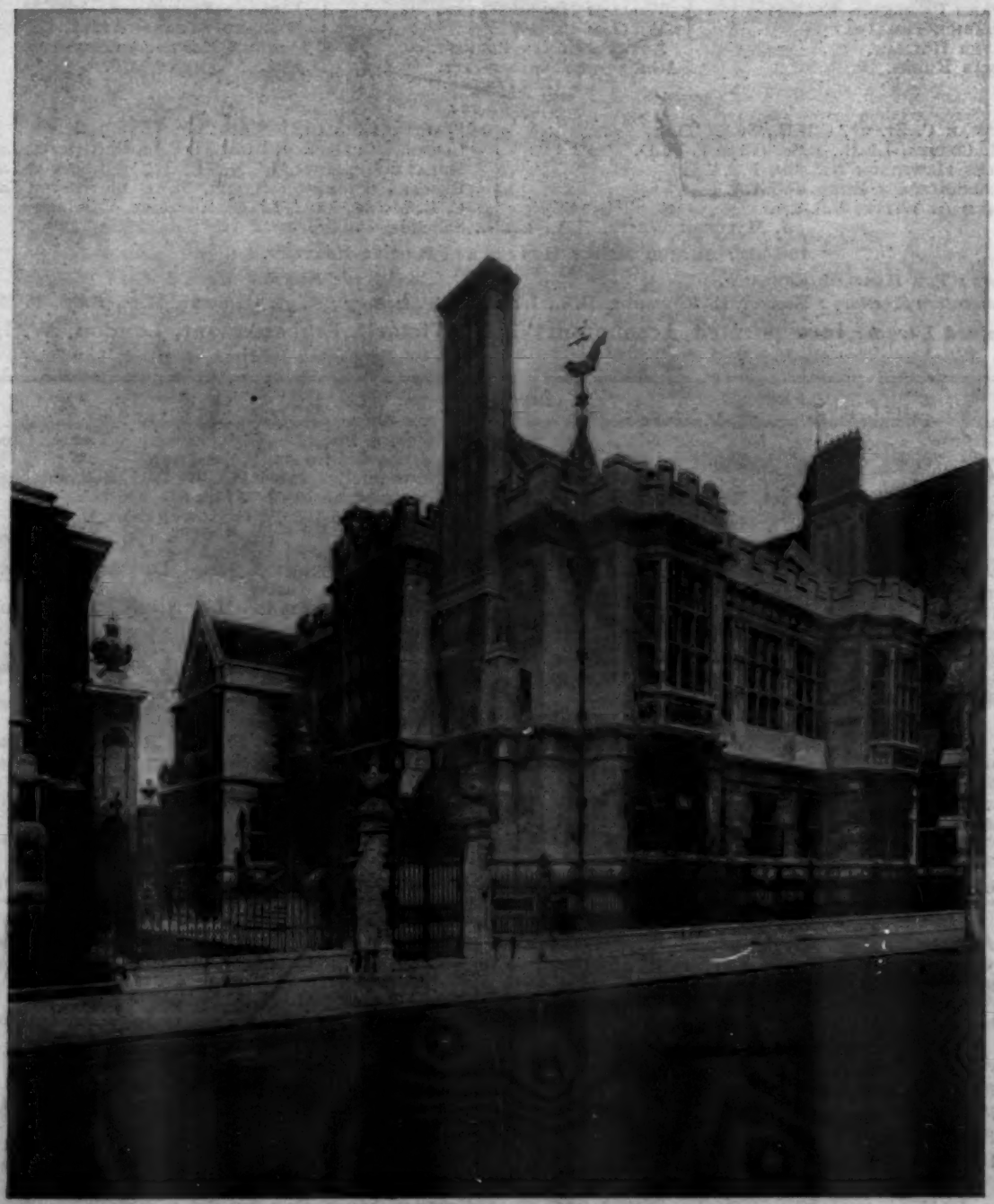

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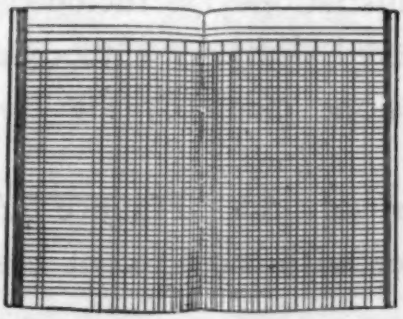

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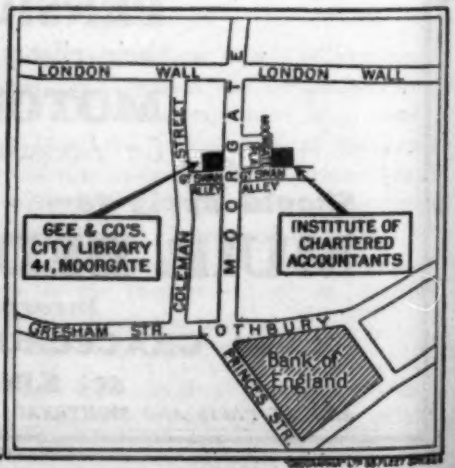

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